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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 17 OF 2021
WITH
INTERIM APPLICATION NO. 3629 OF 2020**

SURENDRA SUBHEDAR SINGH ..APPELLANT
VS.
ASSISTANT MUNICIPAL COMMISSIONER ..RESPONDENT

Shri Girish Godbole i/b. Shri Shyam K. Singh for the
appellant.
Shri Dharmesh Vyas a/w. Shri R. Y. Sirsikar for respondent-
MCGM.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 12, 2022.

P.C. :

1. The notice issued by the Mumbai Municipal Corporation (hereafter 'the Corporation' for short) under Section 314 of the Mumbai Municipal Corporation Act, 1888 was under challenge in the suit filed by the appellants. The suit structures are stalls outside Mulund railway station. It is the contention of learned counsel for the Corporation that the structures need to be demolished forthwith for public purpose. It is the contention of learned counsel Shri Godbole that the structures are on private land. Learned counsel for the Corporation submitted that some alternate accommodation was offered.

2. Be that as it may, the order under challenge in this appeal is an order of the trial Court refusing ad-interim injunction in favour of the appellant. During the pendency of this appeal additional documents were filed to strengthen the case of the plaintiffs. Reply has been filed by the Corporation disputing the stand taken. The appeal is pending from 2021. There is an interim protection granted in favour of the appellant. Having regard to the nature of the controversy and considering the nature of the additional documents which have been produced, it would be proper if the said documents are considered by the trial Court in the first instance.

3. Learned counsel Shri Godbole prayed that he may be granted liberty to file application for ad-interim relief on the basis of these additional documents.

4. Since Notice of Motion is pending, a direction can be issued to the trial Court to expeditiously decide Notice of Motion itself within a period of twelve (12) weeks from November 3, 2022.

5. The appellant is at liberty to file an additional affidavit along with the documents on which reliance is placed which will be taken into consideration by the trial Court while deciding the Notice of Motion.

6. Copy of this order be placed before learned trial Court on November 3, 2022 by the parties.

7. The appellant to remain present before the trial Court

on November 3, 2022.

8. The interim protection granted by this Court on February 4, 2021 to continue till decision of the Notice of Motion.

9. It is made clear that Notice of Motion may be decided on its own merits without being influenced by the observations made by the trial Court in the order impugned in this appeal.

10. The appeal is disposed of.

11. The interim application is also disposed of.

(M.S.KARNIK, J.)