

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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**CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER No. 361 OF 2019
WITH
CIVIL APPLICATION No. 426 OF 2019
IN
APPEAL FROM ORDER No. 361 OF 2019**

**Rais Ahmed Aktar Hussein
Shaikh**

**...Appellant/
Applicant**

Vs.

**Municipal Corporation of Greater
Mumbai**

...Respondent

**WITH
CIVIL APPLICATION No. 427 OF 2019
IN
APPEAL FROM ORDER No. 361 OF 2019**

Rajesh N. Mehta

...Applicant

In the matter between

**Rais Ahmed Aktar Hussein
Shaikh**

...Appellant

Vs.

**Municipal Corporation of Greater
Mumbai**

...Respondent

*** * * ***

**Mr. Anil R. Mishra, for Appellant/Applicant in CAA 426
of 2019**

Mr. P.G. Lad for Applicant in CAA 427 of 2019

**Mr. Anoop Patil a/w. Mr. R.Y. Sirsikar for
Respondent/MCGM**

Coram : Sandeep K. Shinde, J.

Dated: 12th APRIL, 2022.

P.C. :

1. Heard.
2. This appeal challenges the order dated 14th March, 2018, by which, the Learned Judge, City Civil Court declined to protect the suit structure in respect which notice was issued by the Corporation under Section 351(1) of the Mumbai Municipal Corporation Act.
3. It is not in dispute that the suit structure described in the notice is /was being used for commercial purposes. It is not in dispute that Plaintiff does not hold a building permission in respect of the suit structure, which admeasures 12' x 36' of BM walls and M.S. Sheets. Authorised officer of the Corporation after hearing the Plaintiff, in response to notice, concluded that the documents produced and relied on by the noticee, were not establishing, existence of notice structure prior to 1st of April, 1962. The structure is authorized, only when it is approved by competent authority or it falls in 'tolerated category'.
4. Learned counsel for the Appellant would rely on the rent receipts of 1954 (at pages 50-51) to contend, this document clearly shows suit construction was in place prior to datum line, yet it was not appreciate by the Learned trial court. I have

perused the rent receipts. These receipts, are in respect of Room No.83. No document has been brought to my notice to establish that the Room No. 83/84 is the suit structure. To put it differently, rent receipts do not relate to notice structure. Thus the rent receipts do not further plaintiff's case. Other documents, relied on by the Plaintiff are shops and establishment of Licence. Obviously, licenses, would not establish that suit structure was in place before the datum line. In consideration of these facts, in my view, the trial court has rightly declined the relief, to the plaintiff. Thus no interference is called for.

5. Appeal is dismissed. However, Corporation shall not demolish the notice structure for six weeks from today.

(Sandeep K. Shinde, J.)