

PMB

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

**APPEAL FROM ORDER NO.431 OF 2022
WITH
INTERIM APPLICATION NO.2784 OF 2022**

Joginder Nisharam Sharma ..Appellant

vs.

The Designated Officer,
The Executive Engineer, (B & F)-T Ward ..Respondent

Mr. Amrut Joshi a/w Tanna M. Kirti and Sarin Ramani for
appellant.

Mr. R. S. Alange a/w Mr. R. Y. Sirsikar for respondent-
MCGM.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 15, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The trial Court by the impugned order has declined to grant ad-interim relief in the Notice of Motion filed by the appellant. The structure in question is ground+1. The Corporation does not dispute that the structure on the ground floor is authorised and sanctioned. It is the vertical extension viz the first floor that is unauthorised and constructed without any sanctioned plan as per the

contention of the Corporation.

3. Learned counsel for the appellant submitted that the structure in question is a sanctioned structure. Though at page 50 there is something to indicate that the survey was carried out, it is not clear whether this by itself could be sufficient to hold that the structure in question is a censured one. It is for the trial Court to deal with this aspect.

4. Be that as it may, it appears that this Court on 21.04.2021 had passed an interim order restraining the Corporation from enforcing the impugned notice dated 15.01.2021. I am informed that the Notice of Motion for grant of interim relief is still pending. Considering the distance of time from the date when the ad-interim order was passed which is operating in favour of the appellant, it would be in the interest of justice, if the Notice of Motion itself is directed to be heard expeditiously. I am informed that the next date before the trial Court is 11.10.2022. The trial Court is accordingly requested to hear the Notice of Motion expeditiously and preferably within a period of ten weeks from 11.10.2022. Reply, if not already filed, to be

filed within a period of four weeks from today.

5. All contentions are kept open.

6. Any observations made in this order or the order passed by the trial Court in the impugned order shall not influence the trial Court while considering the Notice of Motion on its own merits and in accordance with law.

7. Appeal From Order is disposed of. In view of the disposal of the Appeal From Order, nothing survives for consideration in the Interim Application and the same stands disposed of.

(M. S. KARNIK, J.)