

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO.510 OF 2018**  
**WITH**  
**INTERIM APPLICATION NO. 1071 OF 2021**  
**WITH**  
**CIVIL APPLICATION NO.677 OF 2018**  
**IN**  
**APPEAL FROM ORDER NO.510 OF 2018**

Krishnabihar s/o Baijnath Prasad .. Appellant  
Versus  
M.M.R.D.A. and anr .. Respondents  
...

Mr.Sushil Upadhyay with Ashok M. Saraogi for the appellant.  
Mr.Mayank N. Mishra i/b Kavita N. Salunke for respondent no.1.  
Mr.Om Suryawanshi for respondent no.2.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 4<sup>th</sup> APRIL, 2022**

**P.C:-**

1            Heard learned counsel for the appellant and learned counsel for MMRDA.

2            The Appeal is filed being aggrieved by refusing of the ad-interim relief in Notice of Motion filed in a Suit under Sections 34 and 38 of the Specific Relief Act, coupled with a relief of injunction.

The pleadings in the L.C. Suit No.6984/2018 filed by the plaintiff would reveal that he was allotted shop no.25 situated at Nisarg Co-operative Society, Building no.19, MMRDA colony, Govandi, Mumbai, and upon this allotment, he has installed a small tin-shed over his shelter so as to prevent the nuisance caused by the persons residing in a floor above him, since they were found to be indulging in throwing garbage and waste material, which was landing at his entrance. The MMRDA sought demolition of the said shed and this constrained him to file a Civil Suit, seeking a declaration that they have no right to demolish the said structure except by following due process of law.

The reliefs sought in the plaint can very well be understood from the photographs which are placed on record at page nos.35 to 37. Learned counsel for the MMRDA categorically state that there is no dispute about the shop no.25 being allotted. His objection is to the erection of the tin shed which is not permissible.

3           The impugned order which refused ad-interim injunction, however, proceed on a completely different footing, wherein the learned Judge while refusing the ad-interim relief observed that shop no.25 itself is in dispute and *prima facie* no case has been made out by the plaintiff regarding possession of shop no.25.

4           In the wake of the statement made by the learned counsel for the MMRDA and on perusal of the documents produced on record by the appellant, establishing his ownership and possession over shop no.25, and since it is informed that the tin-shed which was erected was to avoid the nuisance and since it stand as on today, by directing the City Civil Court, Mumbai to decide the Notice of Motion No.1905/2018, the Appeal deserve a dismissal by continuing the tin-shed, if at all it is standing as on date.

The City Civil Court shall dispose off the Notice of Motion within a period of one month from today.

In view of the dismissal of AO, IA No.1071/2021 and CA No.677/2018 do not survive and are disposed off accordingly.

**( SMT. BHARATI DANGRE, J.)**