

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER No. 288 OF 2021****WITH
INTERIM APPLICATION No. 2579 OF 2021
IN
APPEAL FROM ORDER No. 288 OF 2021**VAISHALI
ANIL
TIKAMDigitally
signed by
VAISHALI
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Date:
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+0530**Nitin Manilal Furia and Anr.****...Appellants/
Applicants****Vs.****Designated Officer,
F/North Ward and Ors.****...Respondents***** * * *****Mr. Amogh Singh i/b. Ms. Indira R. Jalgaonkar for
Appellants****Mr. Dharmesh Vyas a/w. Mr. R.Y. Sirsikar for
Respondent No.1-MCGM****Mr. Aniruddha A. Sapre for Respondent Nos. 3 and 4****Coram : Sandeep K. Shinde, J.****Dated: 18th APRIL, 2022.****P.C. :**

1. Heard learned counsel for the parties.
2. Legality of order dated 21st September, 2021 passed by the Designated officer of the Corporation pursuant to the notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (MR & TP Act for short) is questioned by the

Appellants in Suit No. 1789 of 2021. On 4th August, 2021, notice of motion No. 1381 of 2021 taken out in the suit, was heard and disposed of. Whereby, Learned Judge, City Civil Court directed the Designated officer to consider second reply of the Plaintiffs and pass order afresh, within a month and in meanwhile restrained the Corporation from executing the impugned notice issued till 18th September, 2021. The Designated Officer vide second speaking order dated 2nd September, 2021 directed the Plaintiffs to restore the premises as per approved plan by removing/demolishing unauthorized work forthwith. Thereafter, Plaintiffs amended the plaint and challenged second speaking order of Designated Officer in terms of order passed in Chamber Summons No. 128/2021. Simultaneously, Plaintiffs moved notice of motion No. 2274/2021, seeking order to injunct, Corporation from taking action pursuant to notice issued under Section 53(1) of the MR & TP Act. In the meanwhile, Plaintiffs moved an application below Exhibit '5' on 21st September, 2021 in disposed of notice of motion No. 1381/2021, seeking extension of interim protection that was in force till 18th September, 2021. However, Learned Judge declined to extend the protection, only for the reason, that

protection order had expired on 18th September, 2021. Feeling aggrieved by that order, Plaintiffs have filed this appeal from order. This Court vide order dated 29th September, 2021, restrained the Corporation from taking coercive steps, in respect of notice structure.

3. Heard learned counsel for the parties.

4. Perused the impugned order. Indisputably, the order protecting the notice structure was in force till 18th September, 2021. Notice of Motion No. 227/2021 moved by the Appellants-Plaintiffs is scheduled for hearing on 16th June, 2022. Having regard to this fact, it would be expedient, in the interest of justice, to continue ad-interim protection granted by the Trial Court vide order dated 4th August, 2021 till notice of motion No. 2274/2021 in Suit No. 1789/2021 is decided. Otherwise in absence of protection, second speaking order of Designated Officer will attain finality. As such, the Trial Court shall decide Notice of Motion 2274/2021 on its' own merits without being influenced by the impugned order. The parties shall appear before the Trial Court on 16th June, 2022, without fail. Whereafter, Learned Trial Judge shall make an endeavour to dispose of notice of motion preferably, before 30th July, 2022. For the reasons stated above,

Appeal and all applications therein are disposed of in the
aforesaid terms.

(Sandeep K. Shinde, J.)