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

**APPEAL FROM ORDER NO.867 OF 2022
WITH
INTERIM APPLICATION NO.17835 OF 2022**

Sunil Ramlakhan Mishra ..Appellant/Applicant

vs.

Municipal Corporation of Greater
Mumbai and anr. ..Respondents

Mr. R. D. Suryawanshi i/b. Mr. Suraj Naik for
appellant/applicant.
Mr. R. Y. Sirsikar for respondent-MCGM.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 7, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The appellant is the original plaintiff. In the suit preferred by the plaintiff before the City Civil Court, under challenge is a notice under Section 351 of the Bombay Municipal Corporation Act, 1888 (hereafter "the said Act", for short) in respect of the notice structure which is a bangle shop. It is the contention of the learned counsel for

the Corporation that the said structure is illegal and constructed by iron metal and rolling shutter admeasuring 1.69 M X 1.69 M X 1.8 M (ht) without any authorisation or sanction. Before the trial Court, the plaintiff has not produced any authorisation document to show that his structure is authorised. The trial Court refused the prayer for ad-interim relief. The defendant-Corporation was directed to file detailed reply. It is the observation of the learned trial Judge that none of the documents produced on record by the plaintiff are sufficient to establish that the structure is in existence prior to the date of registration.

3. After the matter was argued for some time and upon consideration of the documents, it is seen that so far as the structure is concerned which is made of iron metal and rolling shutter, there is no authorisation. Learned counsel for the plaintiff however relied upon the registration certificate which is at Exhibit 'I' issued under the Bombay Shops and Establishments Act, 1948. The name of the building in the certificate is Ram Mandir building which is different from the Society where the disputed structure is

located. Learned counsel submitted that there appears to be some mistake in mentioning the name of the building. The trial Court did not rely upon the said documents. Learned counsel however relied upon the receipts of the year 1966-1967 issued by the Jai Hind Society being the license fee in respect of the open space for one wooden stall No.32. Learned counsel submits that these documents and these receipts clearly establish that there was wooden stall in the year 1966-1967. Learned counsel submits that in any case he has a right to carry on his business from the wooden stall. Learned counsel, on instructions submitted that as he is now ready to remove the structure which according to the Corporation is unauthorised, he may be permitted to carry on his business by restoring the wooden stall for which the Jai Hind Society is/was charging license fee.

4. Learned counsel for the Corporation supported the order and submitted that the order passed by the trial Court does not warrant any interference.

5. In my opinion, these are matters which need to be considered by the trial Court in the first instance as a

submission which was not canvassed before the trial Court is sought to be advanced. Considering that there are documents on record that indicate the existence of the wooden stall in Jai Hind Society for which license fee was charged and now that the appellant is accepting that the structure for which the notice is issued under Section 351 of the said Act is unauthorised and without sanction, in the interest of justice, an opportunity needs to be given to the plaintiff to file an appropriate Notice of Motion seeking the relief based on the submissions made hereinbefore, which were not earlier canvassed before the trial Court.

6. For the present, within a period of two weeks from today, learned counsel submits that the plaintiff will remove the rolling shutter and the roof which is of iron metal in respect of the noticed structure. Statement is accepted.

7. If a Notice of Motion or any other appropriate proceedings are filed by the plaintiff in view of the above stand, the same shall be considered by the trial Court on its own merits and in accordance with law. It is requested that in case such a Notice of Motion is filed, the said Notice of

Motion and the present Notice of Motion No.3125 of 2022 be heard expeditiously. In view of the statement made by learned counsel, the Corporation may take action against the modified structure in case of any violation in accordance with law. For a period of twelve weeks from today, Corporation not to act upon the Section 351 notice which is subject matter of the suit.

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

(M. S. KARNIK, J.)