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

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**APPEAL FROM ORDER NO.929 OF 2022
WITH
INTERIM APPLICATION NO.18504 OF 2022**

Rauf Shaikh
vs.

..Appellant

Mumbai Municipal Corporation of
Greater Mumbai and anr.

..Respondents

Mr. Yatin Malvankar a/w Mr. Ranjit D. Shinde and Mr.
Shubham Misar i/b. Mr. Ajinkya M. Udane for appellant.
Mr. R. Y. Sirsikar for respondent-MCGM.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The order impugned dated 07.09.2022 is passed by the City Civil Court, Dindoshi, Mumbai. The Notice of Motion was taken out by the appellant-plaintiff for temporary injunction restraining the defendants-Mumbai Municipal Corporation of Greater Mumbai (hereafter 'MCGM', for short) from executing or operating notice dated 16.03.2022 issued under Section 351 of the Mumbai Municipal Corporation Act,

1888 (hereafter 'the said Act', for short). There was an earlier round of litigation in this Court. This Court by an order dated 05.05.2022 granted an opportunity to the appellant to seek regularization of the alleged unauthorized construction subject to the terms and conditions which the Corporation was to emphasize. That was at the stage when the ad-interim relief was refused by the Civil Judge. This Court granted protection to the plaintiffs for a period of four weeks from 05.05.2022 and directed the City Civil Court to take up the Notice of Motion for hearing on expiry of four weeks and test the effect of the proposal for regularization on the relief sought in the Notice of Motion. Thereafter, the Notice of Motion was heard and it was observed by the learned Judge that till the date of hearing, no copy of online application for regularization is filed by the appellant-plaintiff. The protection therefore was not granted to the appellant. The order of the trial Court as it stands does not suffer from any illegality so as to warrant interference.

3. Mr. Sirsikar, learned counsel for the MCGM is justified in contending that based on the materials on record and

especially when there was no application for regularization pending with the MCGM, the trial Court is well justified in rejecting the Notice of Motion.

4. Ordinarily, I would not have been persuaded to interfere with the order impugned. Learned counsel for the appellant, however submitted that the plaintiffs are the occupiers of the flats in question in respect of the building which is sought to be proceeded with by the MCGM under Section 351 of the said Act. It is submitted that there was a default on the part of the owner of the land whose duty it was to file the application to take steps for which the plaintiffs should not be made to suffer. Even this contention of learned counsel for the plaintiff is not very appealing and even the trial Court had observed that though the landowner had filed an application for regularization, but the same was in an offline mode, which was not consonance with the procedure prescribed by the MCGM.

5. Learned counsel for the appellant however pleaded that, along with the application, as many as 35 compliances are required to be made. He submits that the plaintiffs will

be in possession to do so if some more time is granted. Learned counsel further submitted that the landowner is now co-operating with the plaintiff and every possible and bonafide attempt is being made to file the application for regularization after complying with the requisite procedure and in the requisite form. Learned counsel for the appellant submitted that the appellant would require eight weeks to effect the necessary compliances.

6. The structure in question is unauthorized, comprising of ground plus three upper floors, therefore, the MCGM has rightly proceeded against it under Section 351 of the said Act. This Court passed an order giving an opportunity to the appellants to submit an application for regularization of the alleged unauthorized construction.

7. The appellant is residing in the suit flat. Only in the interest of justice and with a view to give an opportunity to the appellant to submit an application in the prescribed form in terms of the order dated 05.05.2022 passed by this Court, I am inclined to pass the following order.

8. I may not be understood to observed that the trial

Court has erred in passing the impugned order but the order is purely made on the submissions canvassed by the learned counsel for the appellant and in the interest of justice with a view to give an opportunity to the appellant-plaintiff to comply with the order dated 05.05.2022 passed by this Court. The impugned order is therefore set aside. The Notice of Motion to stand restored. The application for regularization be made within a period of eight weeks from today. The Notice of Motion be listed by the trial Court after eight weeks from today, whereupon the City Civil Court may take up the Notice of Motion for hearing on expiry of eight weeks and test the effect of the proposal for regularization on the relief sought in the Notice of Motion. The appellant is protected for ten weeks from today.

9. Appeal From Order is disposed of.

10. 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.)