

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1048 OF 2022**

Smt. Pushpa Dhuriya through
her Grandson Omprakash Shitaram
Dhuriya

....Appellant

Versus

Executive Engineer, Building and Factory
Dept. and others.

....Respondents

Mr. Satyadev D. Joshi, Advocate for the Appellant.
Mr. R. Y. Sirsikar, Advocate for the Respondents-MCGM.

CORAM : S. G. DIGE, JJ.

DATE : 2nd DECEMBER, 2022.

P.C. :

1. Mentioned for production. Taken up on production board in view of urgency.
2. Heard learned counsel for the appellant and learned counsel for the respondents.
3. Learned counsel for the appellant submitted that the suit structure is erected before the datum line i.e. before 1964, it is not a

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temporary structure, it is a permanent structure. He further submitted that respondent has issued notice under Section 55 of the Maharashtra Regional Town Planning Act, 1966, which is illegal but these facts were not considered by the learned trial court and has rejected the ad-interim relief in favour of the appellant, which is under challenge.

4. It is the contention of learned counsel for respondent Nos.1 and 2 that the structure erected by the appellant/original plaintiff is illegal, it is not a permanent structure but a temporary structure. Hence, notice issued under Section 55 of the Maharashtra of the Maharashtra Regional Town Planning Act is legal and the trial court has rightly rejected the ad-interim relief.

5. I have heard the submissions of both learned counsel. The trial court has rejected the ad-interim relief. The notice of motion praying for interim relief is pending before the trial court. Both parties are required to be heard on the basis of the documents submitted before the trial court and facts mentioned in the notice of motion.

6. In view of the above, I pass the following order :
1. The appeal from order is partly allowed.
 2. The City Civil Court is requested to expedite the hearing of the pending notice of motion in respect of interim relief claimed by the appellant as expeditiously as possible and preferably within two months on its own merits after the receipt of the order of this Court.
 3. Till then, no coercive steps shall be taken against the suit structure of the appellant.

The appeal from order is disposed of in the above terms.

7. In view of disposal of appeal from order, pending interim application will not survive for consideration and same is also disposed of.

(S. G. DIGE, J.)