

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

**APPEAL FROM ORDER NO. 1125 OF 2022
WITH
INTERIM APPLICATION NO. 30098 OF 2022
IN
APPEAL FROM ORDER NO. 1125 OF 2022**

Dharnendra Sheshmal Jain and anr. Appellants
v/s.
The Municipal Corporation of Greater
Mumbai and ors. Respondents

Mr. Sandeep Sharma for the Appellants.
Mr. R.Y. Sirsikar for the Respondent – MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 19th DECEMBER, 2022.

P. C. :-

- . With consent, heard finally at the stage of admission.
2. The Appellants have challenged the impugned order dated 22/11/2022 whereby the learned Ad-hoc Judge, City Civil Court, Gr. Mumbai has rejected the prayer for ad-interim relief in Notice of Motion No.4108/2022 in L.C. Suit (St.) No.12271/2022.
3. The Respondent – Corporation has issued notice dated 04/02/2020 of MMC Act and speaking order dated 13/09/2020 in respect of loft allegedly constructed in Room no.5A and 14 in Modi

Building, Dr. M.B. Welkar Street, Kalbadevi Road, Mumbai. The learned Judge has held that the Appellant – plaintiff has not sought regularization of the structure as per the guidelines issued by the Government and Corporation from time to time. The learned Judge has further observed that there is no prima facie material to show that the disputed lofts were constructed prior to 1995-1996.

4. Learned counsel for the Appellants states that room no.5A was earlier in possession of Respondent No.3 – Sheshmal Jain. He has drawn my attention to the extract of the assessment register for the period from 01/04/1995 to 31/03/1996 which prima facie reveals that the room in possession of Sheshmal Jain (room no.5A) had additional loft. The extract of assessment also refers to another room which is described as '1 room' which according to the learned counsel for the Appellants refers to the room no.14. Learned counsel for the Appellants states that area of each of the rooms is 130 sq.ft excluding the loft area. The said extract reveals that rateable value in respect of the room no.14 is almost the same as room no.5A with loft which would prima facie suggest that the loft in room no.14 was in existence since 1995. Learned counsel for the Appellants states that the Appellants have not been able to apply for regularization since the

Appellants are occupying the premises as tenants and that the owner of the premises has refused to grant NOC which is an essential requirement as per the circular.

5. The records reveals that the loft is in existence since long. In the event the structure is not protected, the Notice of Motion will be rendered infructuous. Hence, the Appeal is allowed. The impugned order dated 22/11/2022 is set-aside. The Respondent – Corporation is restrained from acting upon the notice dated 04/02/2020 under section 351 of MMC Act till the disposal of the Notice of Motion. The learned Judge shall dispose of the Notice of Motion within three months from the date of receipt of this order. Interim Application stands disposed in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
H JAYANI**

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