

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

**APPEAL FROM ORDER NO. 1137 OF 2022
WITH
INTERIM APPLICATION NO. 30313 OF 2022
IN
APPEAL FROM ORDER NO. 1137 OF 2022**

Mr. Mohd Ziya Shamshuddin Shaikh Appellant
v/s.

The Municipal Corporation of
Greater Mumbai Respondent

Mr. S.K. Dubey a/w. Mr. Mukesh Dubey for the Appellant.
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 Appellant has challenged the order dated 13/12/2022 whereby the learned Ad-hoc Judge, City Civil Court, Gr. Mumbai has rejected ad-interim relief pending hearing of the Notice of Motion filed in L.C. Suit (St.) No.13709 of 2022.

3. Heard learned counsel for the Appellant and learned counsel for the Corporation. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The Corporation had issued notice dated 30/11/2022 under section 354 of the MMC Act alleging that the Appellant herein has carried out unauthorized construction of 04 bathrooms, 02 WC, loft with M.S. Angle and ladi coba slab, construction of brick masonry walls and fixing M.S. rolling shutter. The Appellant replied to the said notice on 30/11/2022. By speaking order dated 05/12/2022, the Appellant was directed to remove the notice work which is stated to be unauthorized construction. The speaking order records that the Appellant had not replied to the notice under section 354(A). The same appears to be factually incorrect as the records prima facie indicate that the Appellant had replied to the said notice on 05/12/2022.

5. The Corporation has passed the speaking order without considering the reply filed by the Appellant. The case is of violation of the principles of natural justice. On this count alone, prima facie, the speaking order cannot be sustained. Hence, in my considered view, the structure needs to be protected till the notice of motion is decided on merits.

6. Considering the above facts and circumstances, the Appeal is allowed. The impugned order dated 13/12/2022 passed by the

learned Ad-hoc Judge, City Civil Court, Gr. Mumbai, is set-aside. The Corporation is restrained from acting upon the said notice pending hearing of the Notice of Motion. The learned Judge is directed to dispose of the Notice of Motion within a period of four months from the date of receipt of this order. Pending Applications, if any, stand disposed of in view disposal of the Appeal.

PREETI
H
JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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by PREETI H
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Date: 2022.12.22
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