

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 45 OF 2023
IN
NOTICE OF MOTION NO. OF 2023
WITH
INTERIM APPLICATION NO. 535 OF 2023**

Trevor Leandar D'souza & Ors. ..Appellants
Vs.
Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Mr. Deepak Shukla i/b. Mr. B.N. Shukla & Co. for Appellants.
Mr. R. Y. Sirsikar for Respondent/MCGM.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 18, 2023**

P.C.:

1. Not on board. Taken on board on a praecipe being moved on behalf of the appellants.
2. Heard learned counsel for the appellants and learned counsel for the respondents.
3. The order impugned is an order dated 09 January, 2023 passed by the learned Judge of the City Civil Court, Mumbai on a draft Notice of Motion as moved on behalf of the appellants whereby ad-interim reliefs as prayed for were rejected.
4. Challenge in the suit is in regard to an action as initiated by the Municipal Corporation under Section 351/354A of the Mumbai

Municipal Corporation Act, 1888. The appellants were issued a Show Cause Notice which was replied by a detailed letter of the appellants' advocate. Considering such contentions as recorded in the reply to the show cause notice, a detailed order has been passed by the Designated Officer of the Municipal Corporation recording that the construction as objected in the Municipal Corporation's notice was unauthorized. The appellants were called upon to remove the construction within a period of 15 days.

5. In the aforesaid circumstances, the appellants approached the City Civil Court by the suit in question contending that the structure is authorized. The learned trial Judge in passing the impugned order was not persuaded to accept the contentions of the appellants in regard to the suit structure being authorised.

6. Learned counsel for the appellants in assailing the impugned order has drawn the Court's attention to certain documents which are placed on record. Perusal of the documents indicates that none of the documents would show that the structure as objected by the notice is authorized and/or legal. None of the documents would also go to show that the structure in question was in existence prior to the datum line. There was no permission/approval granted by the Municipal Corporation to put up the structure in question.

7. In the circumstances, no perversity is found in the prima-facie findings as recorded by the trial Court. There is no merit in the appeal. It is accordingly rejected. No costs.

8. All contentions of the parties in the pending suit are expressly kept open.
9. Interim application would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]