

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 154 OF 2019
IN
APPEAL FROM ORDER NO. 1238 OF 2015
IN
DRAFT NOTICE OF MOTION NO. ____ OF 2015
IN
L.C. SUIT NO. 1325 OF 2015

Sardar Krishan Singh

...Applicant
(Orig. Appellant)

V/s.

The Brihanmumbai Municipal
Corporation

....Respondent

WITH
APPEAL FROM ORDER NO. 1238 OF 2015

Sardar Krishan Singh

...Appellant
(Orig. Plaintiff)

V/s.

The Brihanmumbai Municipal
Corporation

....Respondent

Mr. Anil R. Mishra, for the Applicant-Appellant.

Mrs. Smita Tondwalkar, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 November 2023.

P.C. :

Civil Application No. 154 of 2019 :

1. This Civil Application is filed seeking restoration of the Appeal which was dismissed for default vide order dated 10 September 2018. There is delay of 97 days in filing the Civil Application. Perusal of the order dated 10 September 2018 would indicate that the suit structure was already demolished before 10 September 2018. The learned counsel for the Applicant would dispute this position and would submit that only partial demolition was carried out. Be that as it may, the Appeal is being taken up for disposal, considering that an order refusing *ad-interim* relief is challenged in the Appeal. Accordingly for the limited purpose of disposal of the Appeal, the Civil Application is allowed. Appeal from Order is restored to file.

Appeal from Order No. 1238 of 2015 :

2. The Appeal is filed challenging the order passed by the City Civil Court on 9 May 2015 refusing *ad-interim* relief in draft Notice of Motion tendered by the Appellant-Plaintiff. By now, period of 8 long years have lapsed since *ad-interim* relief was refused to the Appellant-Plaintiff. While dismissing the present Appeal for default, this Court has taken note of photographs placed on record by Municipal Corporation to indicate that the suit structure has already been demolished. The learned counsel appearing for the Appellant would contend that only a partial demolition of the suit structure was carried out by the Municipal Corporation. He would further submit

that this Court had directed the parties to maintain *status-quo* vide order dated 21 May 2015. He would further submit that relief sought in the Notice of Motion would still continue to survive and that the Appellant-Plaintiff be granted liberty to press the Notice of Motion. Accordingly, the Appeal is disposed of with liberty to the Appellant-Plaintiff to argue the Notice of Motion before the City Civil Court for its decision. The City Civil Court shall proceed to decide the Notice of Motion without being influenced by any of the orders passed in the present Appeal. With the above observations, the Appeal is **disposed of**.

SANDEEP V. MARNE, J.

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