

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.332 OF 2023
WITH
INTERIM APPLICATION NO.4106 OF 2023**

Hemant Kasinath Gharat	...	Appellant
versus		
The Municipal Corporation of Greater Mumbai and Anr.	...	Respondents

Mr. V.S.Kapse i/by Mr. Prakash Tiwari, for Appellant.
Mrs. Smita Tondwalkar, for MCGM.

CORAM: N.J.JAMADAR, J.

DATE : 7 JUNE 2023

P.C.

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 12 April 2023 passed by the learned Judge, City Civil Court, declining to grant ad-interim relief in Notice of Motion taken out by the Appellant-Plaintiff to restrain the Respondents-Defendants from acting upon the Notice dated 17 January 2023 under Section 351 of the Mumbai Municipal Corporation Act, 1888.
3. The learned Judge, City Civil Court, was persuaded to reject the prayer for ad-interim relief on the ground that the documents relied upon by the Plaintiff do not indicate that the notice structure has been in existence since prior to detum line.
4. The material on record, however, indicates that the rent receipts were

issued in favour of the father of the Appellant-Plaintiff in the year 1966 and 1980 with clear description of the demised property. It further appears that the Municipal Corporation has assessed the subject property to tax. The Notice structure finds reference in the map prepared for the year 1979-80.

5. In the face of the aforesaid documents, the Appellant-Plaintiff deserves an opportunity to substantiate its claim when the notice structure is tolerated. The Appellant-Plaintiff could not have been non-suited at an ad-interim stage. It would, therefore, be expedient to protect the Appellant-Plaintiff till the Notice of Motion is decided by the City Civil Court.

6. Hence, the following order :

ORDER

- (i) The Appeal stands allowed.
- (ii) The Notice of Motion be decided by the learned Judge, City Civil Court, after providing an opportunity of hearing to the parties as expeditiously as possible.
- (iii) Till the decision of the Notice of Motion, the Respondents-Defendants shall not act upon the impugned notice dated 17 January 2023 issued under Section 351 of the MMC Act.
- (iv) It is hereby made clear that the Notice of Motion be decided by the learned Judge, City Civil Court, on its own merits and in accordance with law

without being influenced by any of the observations made hereinabove which were for the purpose of deciding the legality of the order refusing to grant ad-interim relief.

(v) In view of the disposal of the Appeal, Interim Application also stands disposed.

(N.J.JAMADAR, J.)