

Anand Vasant Ingale	...	Appellant
versus		
Municipal Corporation of Greater Mumbai and Ors.	...	Respondents

Mr. Aseem Naphade with Ms. Rekha Shinde, Ms. Neha Kamble i/by Legal Chartered for Appellant.
Mrs. Smita Tondwalkar, for MCGM.
Mr. Jitu N. Gohil J.E. B&F, N Ward, present.

CORAM: N.J.JAMADAR, J.

DATE: 19 JUNE 2023

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this appeal is to an order dated 28 April 2023 passed by the learned Judge, City Civil Court, Mumbai whereby the learned Judge, City Civil Court declined to grant ad-interim relief in unregistered Notice of Motion in L.C.Suit No.5079 of 2023 taken out by the Appellant-Plaintiff to restrain the Respondent-Corporation from acting upon a Notice dated 9 March 2023 under Section 351(1A) of the Mumbai Municipal Corporation Act, 1888.
3. When the Notice of Motion was listed before the vacation Court, this Court declined to grant ad-interim relief and posted the matter today.

4. The learned Counsel for the Appellant submits that in the intervening period, the Appellant-Plaintiff has come across documents which show the existence of the structure prior to the datum line. Attention of the Court was invited to the copies of the documents annexed to the Interim Application.

5. Evidently, those documents were not tendered before the learned Judge, City Civil Court. Hence, at this stage, it may not be permissible to consider the prayer for ad-interim relief on the basis of the documents which were not on the file of the learned Judge, City Civil Court. Since the Notice of Motion still awaits adjudication, it would be appropriate to grant liberty to the Plaintiff to take out appropriate application so as to annex the copies of the documents which are now sought to be tendered.

6. Hence, the Appeal stands disposed with liberty to the Appellant-Plaintiff to take out an application for amendment. If such an application is filed, the learned Judge, City Civil Court shall decide the same on merits and in accordance with law. The learned Judge, City Civil Court shall make an endeavour to hear and decide the Notice of Motion itself as expeditiously as possible.

7. In view of the disposal of the Appeal, the Interim Application does not survive and also stands disposed.

(N.J.JAMADAR, J.)