

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.417 OF 2023
WITH
INTERIM APPLICATION NO.7739 OF 2023**

Deep Collection Private Limited ...Appellant
vs.
Municipal Corporation of Greater Mumbai ...Respondent

Mr. Madhur Surana i/b. Mr. Rajan Thakkar, for the Appellant
Ms. Smita Tondwalkar, for Respondent-MCGM.
Mr. Bharat Shirke, AE (B & F) F/s Ward present.

CORAM : N. J. JAMADAR, J.
DATE : JULY 26, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. When the appeal was listed before this Court on 6th June, 2023 while granting ad-interim protection this Court has passed the following order.
 3. The challenge in this appeal is to an order dated 6th May, 2023 passed by the learned Judge, City Civil Court in Notice of Motion No.1545 of 2023 in Long Cause Suit No.4446 of 2023 whereby the learned Judge declined to grant ad-interim relief. In the impugned order there is reference to the permission granted by the Municipal Corporation on 4th May, 1997 to construct the loft and cabin in accordance with the plan approved by the Corporation.
 4. The controversy essentially revolves around the question as to whether the impugned notice structure has been constructed in excess of the permission granted by the Municipal Corporation vide order dated 4th May, 1997.

5. The permission referred to in the aforesaid order is in fact vide letter dated 19th June, 1987. The said letter indicates that the predecessor in title of the plaintiff was permitted to construct the loft and cabin in accordance with the plan duly approved by the Corporation.

6. The learned counsel for the respondent-Corporation submitted that the plan annexed to the purported permission dated 4th May, 1987 (page 69 of appeal memo) is not the approved plan.

7. At this ad-interim stage, the permission granted by the respondent-Corporation vide letter dated 19th June, 1987 cannot be discarded. The said permission makes out a prima facie case for ad-interim protection till the Notice of Motion is heard and decided by the learned Judge, City Civil Court.

8. In view of the above, the appeal stands allowed.

9. The impugned order declining to grant ad-interim relief stands quashed and set aside.

10. The learned Judge, City Civil Court is requested to make an endeavour to decide the Notice of Motion as expeditiously as possible.

11. The respondent-Corporation shall file affidavit in reply to the Notice of Motion, if not already filed, within a period of three weeks from today.

12. Re-joinder, if any, be filed within two weeks thereafter.
13. The appellant/plaintiff shall not seek any adjournment before the trial Court.
14. Till the disposal of the Notice of Motion, the ad-interim protection granted by the learned Judge and continued by this Court by an order dated 6th June, 2023 shall continue to operate.
15. In view of the disposal of the appeal, the interim application also stands disposed.
16. It is hereby made clear that the observations hereinabove are confined to entitlement for ad-interim relief and they shall not be construed as an expression of opinion on the merits of the claim for temporary injunction. The learned Judge, City Civil Court shall decide the Notice of Motion on its own merits and in accordance with law.

(N. J. JAMADAR, J.)