

Sayali Upasani

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

**INTERIM APPLICATION NO. 13904 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 19575 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 19578 OF 2023**

Mr. Vincent Lewis ...Applicant

In the matter between

Mr. Vincent Lewis ...Appellant

Vs.

Municipal Corporation of Greater Mumbai ...Respondent

**AND
INTERIM APPLICATION NO. 13928 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 19612 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 19613 OF 2023**

Mr. N.M. Sanil ...Applicant

In the matter between

Mr. N.M. Sanil ...Appellant

Vs.

Municipal Corporation of Greater Mumbai ...Respondent

**AND
INTERIM APPLICATION NO. 13930 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 19568 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 19573 OF 2023**

Mr. Thangrajan Susainathan Manikam ...Applicant

In the matter between

Mr. Thangrajan Susainathan Manikam ...Appellant

Vs.

Municipal Corporation of Greater Mumbai ...Respondent

Mrs. Jai Kanade a/w Ms. Ketki Gadkari a/w Ms. Aishwarya Shinde, for Applicant.

Ms. Smita Tondwalkar, for Respondent-MCGM.

CORAM:- N. J. JAMADAR, J.

DATED:- 1st AUGUST, 2023

PC:-

**INTERIM APPLICATION NO. 13930 OF 2023
IN
APPEAL FROM ORDER (ST) NO. 19568 OF 2023**

- 1) Heard the learned Counsel for the parties.
- 2) Issue notice to the respondents.
- 3) Ms. Tondwalkar, the learned Counsel for the respondent waives notice. Having regard to the delay of two days in filing

the Appeal and for the reasons assigned in the application, the delay in preferring the Appeal, stands condoned.

4) The application stands allowed.

APPEAL FROM ORDER (ST) NO. 19568 OF 2023

WITH

INTERIM APPLICATION (ST) NO. 19573 OF 2023

- 1) Heard the learned Counsel for the parties.
- 2) These Appeals are directed against an orders passed by the learned Judge, City Civil Court on 15th June, 2023, whereby the learned Judge was persuaded to grant ad-interim relief in respect of the mezzanine floor only and declined to exercise a discretion in respect of other structures, which were stated to be unauthorised. In view of the statement made on behalf of the respondent-Corporation, the respondent-Corporation had already acted upon the impugned notice as regards the said structures except mezzanine floor.
- 3) The learned Counsel for the appellant makes a grievance that after the order impugned herein came to be passed on 28th July, 2023, the respondent – Corporation demolished further structures on the basis of very same notices, which have been impugned in the suits before the City Civil Court.

4) Since respondent-Corporation has allegedly demolished the structures before passing of the impugned order, it would be appropriate for the appellant-plaintiffs to seek amendment in the plaint and appropriate reliefs. At the same time, as it has been the positive case of the respondent-Corporation that it has taken action qua the structures except the mezzanine floor, the respondent-Corporation would not be justified in taking further action on the basis of the very same notices under Section 351 of the Mumbai Municipal Corporation Act, 1888.

5) In view of the above, since the Notices of Motion awaits final adjudication before the learned Judge, City Civil Court, the Appeals stand disposed with a direction to the respondent-Corporation not to take any action on the basis of the impugned notices, save and except the action which may become lawful upon the adjudication of the Notices of Motion.

6) In view of disposal of the Appeals, the Interim Applications also stand disposed.

[N. J. JAMADAR, J.]