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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.165 OF 2020
with
INTERIM APPLICATION NO.1246 OF 2023

ASHWIN KARIA ... Appellant
Versus
MUNICIPAL CORPORATION OF
GREATER MUMBAI AND ANR ... Respondents

Mr.S. C. Naidu with Ms.Hetal Savla i/b. Mr.Manish Upadhy for the Appellant.
Ms.Smita Tondwalkar, for Respondent – MCGM

Mr.Pranav Yewale, Jr. Engineer D Ward & Mr.Satish Rathod S.E., B.Pcity MCGM
present.

CORAM: G. S. KULKARNI, J.

DATED: FEBRUARY 09, 2023

PC.

1. Heard Mr.Naidu, learned Counsel for the appellant and Ms.Tondwalkar, learned Counsel for the Corporation.
2. This appeal has been filed assailing an order dated 27 August 2019 passed by the learned Judge, City Civil Court, Bombay, whereby a Notice of Motion No.2275 of 2015 filed by the appellant/plaintiff in Long Cause Suit No.1394 of 2015 was rejected. The dispute in the suit concerns a notice issued by the municipal corporation under Section 351 of the Mumbai Municipal Corporation Act,1888 (for short '**the MMC Act**') dated 27 May 2015 which pertains to a mezzanine portion of the premises of the appellant/plaintiff. The contention of the appellant/plaintiff was to the effect that the tenancy of the said premises was acquired by the appellant/plaintiff in the year 2011 and that the

existing mezzanine floor which, according to the plaintiff, was authorized as seen from the appropriate plans which are now in possession of the appellant/plaintiff. The plans are placed on record and annexed to the Interim Application No.1246 of 2023 filed in the present proceedings. Mr.Naidu has referred to these plans which are annexed at page no.23 and 27 of the said Interim Application, which clearly indicate the existence of mezzanine floor. The said plans are approved by the municipal corporation bearing the seal of the municipal corporation.

3. When the proceedings were argued before this Court yesterday, learned Counsel for the municipal corporation sought time to verify the correct position on record of the municipal corporation. Accordingly, on instructions, learned Counsel for the Municipal Corporation would submit that there appears to be substance in the contention of the appellant/plaintiff that there exists a mezzanine floor and the same is also reflected in the plans annexed. She submits that the position will be re-verified by the municipal corporation. If that be so, the speaking order subject matter of challenge in the Suit dated 16 June 2015 cannot operate and the same would be required to be set aside, so that an opportunity is made available to the appellant/plaintiff to place on record a fresh reply / representation to the show cause notice dated 27 May 2015 issued by the municipal corporation under Section 351 of the MMC Act. Let a reply to the show cause notice alongwith the necessary plans be filed within four weeks from today. After the same are placed before the Designated Officer, he shall consider the reply and after offering an opportunity of hearing to the parties, pass appropriate orders in accordance with law. Thus, in view of the above observations, the

impugned order passed by the City Civil Court is required to be set aside. It is accordingly set aside.

4. The appeal from order is accordingly disposed of in the above terms. No costs.

5. All contentions of the parties on the adjudication of the show cause notice are expressly kept open.

6. Mr.Naidu, learned Counsel for the appellant fairly states that in view of the above order, Long Cause Suit No.1394 of 2015 would also not survive and he has instructions to withdraw the same. Accordingly, Long Cause Suit No.1394 of 2015 is permitted to be withdrawn. Office to inform the Registrar, City Civil Court, Bombay, withdrawal of the said suit. The suit is accordingly, disposed of.

(G. S. KULKARNI, J)