

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

**APPEAL FROM ORDER NO. 838 OF 2023
WITH
INTERIM APPLICATION NO.16095 OF 2023**

Umaima Chitalwal	... Appellant
Versus	
Maharashtra Housing and Area Development and Ors.	... Respondents.

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Mr. Karl Tamboli, i/b. Ms. Poonam Madhavani a/w. Ms. Sneha Kudgaonkar for Appellant.

Mr. Sharan Jagatiani, Sr. Advocate a/w. Mr. Mayur Khandeparkar, Mr. Manish Gala, Ms. Bhoomika Karia i/b. Mr. Nilesh Gala for Intervener.

Mr. P. G. Lad, a/w. Ms. Shreya Shah for Respondent-MHADA.

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CORAM: SANDEEP V. MARNE, J.

DATE : 13 OCTOBER 2023.

P. C.:

The challenge in this Appeal is to the order dated 21 September 2023 passed by the City Civil Court rejecting ad-interim relief in favour of Appellant.

2. When this Appeal came up for hearing before this Court, following order was passed on 29 September 2023 :-

“P.C.

1. Mentioned. Not on board. Taken on praceipe due to urgency.

2. The learned counsel appearing for the Appellant would submit that the Appeal has been lodged by way of E-filing. That however on account of some technical glitches, the stamp number is not getting generated. He submits that by notice dated 15 September 2023, the Respondents have been directed to vacate the premises within 48 hrs. List the Appeal for further consideration on **4 October 2023, high on board.**

3. Till the next date of hearing, the Respondents are restrained from taking any action in pursuance of the impugned notice.

3. Mr. Tamboli, the learned counsel appearing from Appellant would submit that MHADA has already filed its reply to the Notice of Motion and motion is being taken up for hearing by the City Civil Court.

4. Mr. Jagatiani, the learned senior Advocate appearing for Intervener would submit that while occupying the suit structures by virtue of interim order passed by this Court on 29 September 2023, the occupants are filing complaints with Municipal Corporation and another authorities with a view to stay the construction activities in the property which is owned by the Intervener.

5. Mr. Lad the learned counsel appearing for MHADA would submit that an additional affidavit will be filed on behalf of MHADA by 19 October 2023. Mr. Jagatiani would also assure this Court that reply on behalf of Intervener would be filed by 19 October 2023.

6. Considering the fact that pleadings in the motion are getting complete and the motion can be heard and decided finally, instead of

determining the correctness of the order passed by the City Civil Court it would be appropriate to request the City Civil Court to decide the motion expeditiously. In the meantime the Interim Relief granted by this Court vide order dated 29 September 2023 to continue subject to the conditions that the Appellant and all the occupants in occupation of the suit structure would occupy the suit structure entirely at their own risk and that they shall not hold either MHADA, Municipal Corporation or Intervener for any damage caused to the suit structure and in respect of any mishap or untoward incident. The Appellants and occupants shall also not restrain the Intervener from carrying out construction activities within Intervener's own property.

7. Since the Intervener has been heard while disposing of this Appeal, it would be appropriate that Intervener is permitted to intervene in the suit filed before the City Civil Court. The City Civil Court is requested to decide the Notice of Motion as expeditiously as possible, preferably within period of one month from today. Till the disposal of the Notice of Motion, the ad-interim protection granted by this Court by order dated 29 September 2023, subject to the conditions indicated above, shall continue to operate.

8. With the above directions, the Appeal is disposed of. With disposal of Appeal, nothing would survive in Interim Application, which is also disposed of.

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SANDEEP V. MARNE, J.