

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

**APPEAL FROM ORDER NO. 827 OF 2023
IN
NOTICE OF MOTION NO. 1192 OF 2022
IN
L.C. SUIT NO. 2544 OF 2010**

**WITH
INTERIM APPLICATION NO. 16031 OF 2023**

Shahun Imran Andari

...Appellant
(Orig. Plaintiff No.73)

V/s.

The Municipal Corporation of
Greater Mumbai

....Respondent

Mr. Ram Ugrah Singh a/w. Mr. Ankur Jain i/by. Ms.Shabnam
Shaikh, for the Appellant.

Mrs. Smita Tondwalkar, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 9 October 2023.

P.C. :

1. This Appeal is filed challenging order dated 14 September 2023 passed by the City Civil Court rejecting Notice of Motion No. 1192/2022. The Motion was filed by Appellant for recall of order dated 16 February 2017 by which the suit was

dismissed for default on account of non-filing of evidence by the Plaintiffs.

2. It appears that 81 Plaintiffs had instituted L.C. Suit No. 2544/2010 challenging notice dated 13 January 2009 and order dated 12 November 2010 of the Municipal Corporation of Greater Mumbai. It appears that during the pendency of the suit, no interim order was granted in favour of the Plaintiffs. On account of repeated non-appearance on the part of the Plaintiffs, the City Civil Court proceeded to dismiss the suit for non-prosecution by its order dated 16 February 2017. For five long years thereafter, no action was taken by the Plaintiffs to seek restoration of the suit. Demolition report placed on record by the Municipal Corporation shows that the first action of demolition was taken on 16 February 2022. It appears that after the demolition action, all 81 Plaintiffs filed Notice of Motion No. 1192/2022 seeking setting aside the order dated 16 February 2017. It appears that the Plaintiffs again reconstructed the structures and therefore further demolition action was required to be taken by the Municipal Corporation on 26 and 28 April 2022. Thus by the time the Notice of Motion No. 1192/2022 was heard by the City Civil Court on 14 September 2023, the suit structures were demolished twice. It appears that the suit structures were causing hindrance on the footpath.

3. The present Appeal is filed by only one of the 81 Plaintiffs. It is difficult to believe that none of the 81 Plaintiffs could take steps for prosecuting the suit diligently. Therefore the reasons of misunderstanding/miscommunication/financial problems or ill-health of Plaintiffs cannot uniformly exist for all the 81 Plaintiffs. It is therefore difficult to believe that any sufficient cause existed for 81 Plaintiffs for the Court to recall its order under Order 9 Rule 9 of the Civil Procedure Code. The structures have already been demolished and its questionable as to whether the cause in the suit would survive. The suit was filed questioning the notice, which has already been acted upon. In these circumstances, it cannot be said that the City Civil Court has committed an error in rejecting the Notice of Motion No. 1192/2022. Appeal being devoid of merits is **dismissed** without any orders as to costs.

4. With dismissal of the Appeal, Interim Application filed for stay does not survive. The same is disposed of as having become infructuous.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

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NEETA SHAILESH
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