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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13072 OF 2023
IN
FIRST APPEAL NO.679 OF 2023
WITH
INTERIM APPLICATION NO.3508 OF 2023
IN
FIRST APPEAL NO. 592 OF 2023

Javed Iqbal Koradia & Anr. : Applicants

IN THE MATTER BETWEEN

Javed Iqbal Koradia & Anr. : Appellants

Vs.

The Municipal Corporation Greater Mumbai : Respondent

Adv. Vishal Kanade a/w Mr. Dhishan Kukreja, Adv. Mohan Salian &
Adv. Harshita Kotian i/by MGS Legal for the Applicants/Appellants.
Mr. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 19th JANUARY, 2024

PC. :

1. Heard both Interim Applications.
2. The Interim Application No.13072 of 2023 in First Appeal No.679 of 2023 is in respect of ground floor whereas Interim Application No.3508 of 2023 in First Appeal No.592 of 2023 is in respect of the

extension to the ground floor on the same land property. Today this Court has admitted both the First Appeals. The Advocates are heard on the point of interim relief. The learned Advocate for the Applicants submits that the action initiated by the Corporation by issuing notice under Section 354 (a) itself is illegal as on the date of issuance of notice, there was already structure standing on the land. Section 354 (a) provides for notice/action only in respect of ongoing construction. He submits that the witness for the Corporation admitted in his evidence that no particulars are given in the notice. From the notice it cannot be made out that the structure was on going.

3. The learned Trial Court however observed that though it is admitted by the witness for the Corporation, he had no personal knowledge and therefore the admission is not material. He has taken this Court to other material to show the construction was already going on. He submits that the Corporation could not produce material to show that the structure was on going and still the Court has dismissed to the suit.

4. The learned Advocate Mr. Parad for the Corporation vehemently opposes the Application stating that, it is clear from the inspection report that the construction was on going when the notice was issued.

5. This Court has gone through the Judgment. *Prima facie* it appears that the learned Trial Court has committed error in considering the admission given by the witness for the Defendant Corporation in favour of the Appellant. This Court finds that case is made out to protect the Applicant. This Court had already protected the Applicant by way of ad-interim relief which is continued till date. This Court finds that the same relief is to be continued. Hence the following order.

ORDER

- (a) The Applications stand allowed and disposed of.
- (b) The Ad-interim relief granted to continue till disposal of First Appeals.

(KISHORE C. SANT, J.)