

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

**INTERIM APPLICATION NO.16700 OF 2023
IN
FIRST APPEAL NO.1030 OF 2023**

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Mrs. Maniben Chandru @ Chandrakant
Dhodi @ Patel ..Applicant
Versus
Municipal Corporation of Greater Mumbai ..Respondent

Mr. C. K. Tripathi, for the Applicant.
Mr. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 18th MARCH, 2024

PC.

1. This Application is by the unsuccessful plaintiff in the suit challenging notice under Section 351 of the Mumbai Municipal Corporation Act. The Respondent/Corporation had issued a notice dated 29th March, 2011. The unauthorized construction is shown as “First Floor structure with BM wall CI Sheet roof as per shown in the sketch”. It is the case of the Applicant that in fact it is only a mezzanine floor and not the first floor. He submits that the Controller of Slum had issued Census Certificate in respect of the structure showing ground floor area 425 sq.ft. and mezzanine floor area 400 sq.ft. approximately. He submits that there is no unauthorized construction as alleged by the Corporation.

2. His further submission is that the Trial Court has wrongly considered that the structure is not a mezzanine floor but is a first floor and has dismissed the suit. He thus prays for interim relief.

3. Learned advocate for the Corporation opposed the Application. He invited attention of this Court to the notice issued by the Corporation. He submits that the notice is clearly given for the construction of the first floor. The Municipal Corporation had given hearing to the Applicant and thereafter the order was passed by the Assistant Commissioner, P/North Ward dated 20th February, 2013. He pointed from the observations of the Court that the added structure matches with the area of the ground floor structure. He submits that mezzanine floor is only half the area of the ground floor. Thus, the area shown to be unauthorized is clearly a structure of first floor. He invited attention to the cross-examination of the plaintiff as well. He thus prays for rejection of the Application.

4. This Court has gone through the observation of the Trial Court. Trial Court has observed that the alleged unauthorized structure admeasures 401.76 sq.ft. and that matches with the ground floor structure. This Court finds that *prima-facie* no case is made out to show that the observation of the Court is not correct or illegal. The plaintiff could not produce sufficient evidence to show that the structure in respect of which notice is issued is mezzanine floor. This Court thus concludes that no case is made out to grant

interim relief in favour of the Applicant. It is only clarified that if mezzanine floor is there, no action be taken in respect mezzanine floor. So far as alleged first floor is concerned, Corporation is free to take action.

5. The Application stands disposed of in above terms.

[KISHORE C. SANT, J.]