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Uday S. Jagtap

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

**APPEAL FROM ORDER NO. 280 OF 2024
WITH
INTERIM APPLICATION NO. 7427 OF 2024
IN
APPEAL FROM ORDER NO. 280 OF 2024**

Kamla Baban Gawade, Thr.
CA Sangeeta Baban Gawade .. Appellant

Vs.
Municipal Corporation of Greater
Mumbai .. Respondent

.....
Mr. S.S. Redekar i/b Ms. Sayli S. Wani for the appellant
Ms. Seena Rawade for the respondent – MCGM
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 27th JUNE, 2024.

P.C.

1. Heard learned Counsel for the appellant and the respondent – MCGM.
2. The trial Court has refused ad-interim relief to the appellant – plaintiff, who has been served with a Notice dated 15th January 2024 under Section 351 of the MMC Act.

3. Ad-interim relief has been refused mainly on the premise that the plaintiff failed to substantiate her occupation over the subject structure, save and except, filing a few rent receipts, which were produced before the concerned authority of the respondent – MCGM. Essentially, the notice structure comprises ground floor beneath a staircase, which is an unauthorized construction.

4. Learned Counsel for the respondent – MCGM invites my attention to the speaking order dated 26th February 2024, which demonstrate as to how the unauthorized and illegal structure has been erected by the appellant – plaintiff who could not substantiate the same by any acceptable and legally admissible document. Speaking order indicates that the document placed by the appellant – plaintiff before the authority does not indicate any authenticity of the notice structure or its existence prior to 1st April, 1962 which is a datum line in commercial structure to be considered in a tolerated category. While rejecting ad-interim relief, the trial Court has granted some time to facilitate the plaintiff to approach this Court.

5. Apprehension of the learned Counsel for the appellant, at this

stage, is that under the garb of removing the so called unauthorized structure, the Corporation may demolish the structure which is in lawful occupation of the plaintiff.

6. Having taken into account the aforesaid aspects, the parties are relegated to the trial Court by disposing of this appeal with a direction to hear the Notice of Motion on its own merits, uninfluenced by the observations made herein after giving due opportunity to the respective parties.

7. It is informed that the matter is now fixed on 2nd July 2024. Upon receipt of this order, the trial Court shall decide the same in accordance with law within four weeks thereafter.

8. Till then, the respondent – Corporation shall not take any coercive action *qua* the suit structure.

9. The appeal stands disposed of in the aforesaid directions. Pending application, if any, also stands disposed of. No costs.

(PRITHVIRAJ K. CHAVAN, J.)