

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

**APPEAL FROM ORDER NO. 455 OF 2024
WITH
INTERIM APPLICATION NO. 9535 OF 2024
IN
APPEAL FROM ORDER NO. 455 OF 2024**

Karsan Raghavji Gala

.... Appellant

V/s.

The Municipal Corporation of Greater
Mumbai

.... Respondent

Mr. P.J. Thorat a/w. Adv. J.S. Yadav i/b. Mr. B.S. Shukla for the Appellant.
Ms. Seena Rawade for the Respondent – MCGM.
Mr. Gopal Arde, Jr. Engineer, MCGM, present.

CORAM : SHYAM C. CHANDAK, J.

DATED : 04th OCTOBER, 2024

P.C. :-

. Heard learned Advocates for the respective parties. Perused the Appeal memo and the Interim Application filed therein.

2) Issue notice to the Respondents. Notice is returnable forthwith.

3) Learned Advocate for the Appellant submits that, only repairs have been carried out in respect of the property, which is subject matter of the Notice under Section 351 of the Mumbai Municipal Corporation Act. In this regard, he pointed out the permission for repairs enclosed with the Appeal memo. He submits that, however, the ad-interim relief is rejected. The impugned Order indicates that, the photo pass is not issued for commercial purpose. No documentary evidence is produced by the

Appellant to show that the structure mentioned in the notice, is the structure in existence prior to the datum line for tolerated structure as on 01st April, 1962 (Commercial) or prior to it. The Appellant could not satisfy that, the commercial structure is constructed with prior sanction/permission from the Competent Authority of the Respondent and therefore, it cannot be protected. However, the same Court granted the ad-interim relief thereby directing the Respondent not to take coercive action till 22nd May, 2024 to facilitate the Appellant to agitate his claim before this Court by way of the Appeal.

4) Learned Advocate for the Appellant further submits that, the aforesaid Appeal has been filed immediately after passing of the impugned Order. However, the Appeal could not reach. Now, the Suit along with Notice of Motion is fixed before the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai on 26th November, 2024 for filing reply.

5) Learned counsel for the Respondent-Corporation states that, the Corporation will file reply to the Notice of Motion on the due date with advance copy to the other side.

6) In view thereof, if this Appeal is heard on the point of admission and thereafter remains pending, the hearing and disposal of the Notice of Motion would be delayed and so the suit. In the backdrop, this Court deem it appropriate that, the Appeal is disposed of with a direction that, the ad-interim relief is continued till 26th November, 2024 with

discretion to the trial Court to continue the same after hearing the parties till the disposal of the Notice of Motion. Hence, following order :-

- (a) Appeal from Order No.455 of 2024 is disposed of.
 - (b) Respondent – Corporation shall not take coercive steps against the structure as specifically described and shown in the said impugned Notice bearing No.RC/Do1RC/014/351-MMC ACT/RC72No1/09-03-2024 dated 09th March, 2024, till 26th November, 2024.
 - (c) The trial Court is at discretion to continue the ad-interim relief after hearing the parties, till disposal of the Notice of Motion.
 - (d) It is made clear that, the aforesaid Appeal is not decided on merits. All contentions of the parties are left open for consideration on its own merits for continuation of ad-interim relief, till the disposal of Notice of Motion.
- 7) Appeal stands disposed of in above terms.
- 8) As a result, Interim Application No.9535 of 2024 does not survive and stands disposed of, accordingly.

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(SHYAM C. CHANDAK, J.)