

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

**APPEAL FROM ORDER NO. 599 OF 2024
WITH
INTERIM APPLICATION NO. 11745 OF 2024
IN
APPEAL FROM ORDER NO. 599 OF 2024**

Mr. Omprakash S. Agrawal (alias O.P. Shah)
and anr.

.... Appellants

Vs.

Municipal Corporation of Greater Mumbai
and anr.

.... Respondents

Mr. Anil C. Singh, Sr. Advocate a/w. Mr. Rohan Savant and Mr. Uttam Rane for the Appellants.

Ms. Seena Rawade for Respondent No.1-MCGM.

Ms. Manisha Jagtap for Respondent No.2-MHADA in AO/527/2024.

Ms. Sayali Apte i/b. Mr. P.G. Lad for Respondent No.2-MHADA in AO/599/2024.

CORAM : SHYAM C. CHANDAK, J.

DATED : 06th SEPTEMBER, 2024

P.C. :-

. Rule. Rule is made returnable forthwith and heard finally with consent of learned Advocates for the respective parties.

2) The aforesaid Appeal impugns the Order dated 07th August, 2024 passed by the learned Ad-hoc City Civil & Addl. Sessions Judge, Borivali Division, Dindoshi in Notice of Motion No. 2691 of 2024 in S.C. Suit No.1137 of 2024. By the said Order, the learned Judge refused to grant ad-interim relief to restrain the Defendants from implementing the Order dated 09th July, 2024 passed by the Respondent No.1-MCGM. The said refusal was for the reason that, an ad-interim relief was granted by Order

dated 18th July, 2024 passed by this Court in the connected Appeal from Order No.527 of 2024 filed by the same Appellants. The said interim relief was granted because the speaking Order dated 08th/09th July, 2024 passed by the Respondent No.1 following the notice, subject matter in the suit, was not served upon the Appellants.

3) Meanwhile, the Respondent-Corporation intended to act upon the speaking Order which posed threat of demolition of the subject hoarding. The said hoarding is in existence since last 30 years, as submitted by the learned counsel for the Appellants. This fact is not disputed by the learned Advocate appearing for the Respondents. The Respondents wants to demolish the said hoarding for want of prior permission of Respondent No.2, on whose land the said hoarding has been installed.

4) Having regard to the aforesaid facts and circumstances, this Court deem it appropriate that, the question of grant of ad-interim relief against the speaking Order dated 08th/09th July 2024, as the case may be, is heard afresh and until the decision on the said question of ad-interim relief, there shall be an ad-interim stay to the said speaking Order dated 08th/09th July, 2024 i.e., no coercive action shall be taken by the Respondents by virtue of the speaking Order.

5) In the backdrop, the Appeal deserves to be partly allowed. Hence, the following Order :-

(a) Appeal from Order No.599 of 2024 is partly allowed.

- (b) The impugned Order dated 07th August, 2024 passed by the learned Ad-hoc City Civil & Addl. Sessions Judge, Borivali Division, Dindoshi in Notice of Motion No. 2691 of 2024 in S.C. Suit No.1137 of 2024, is set-aside.
 - (c) The trial Court to hear the parties afresh.
 - (d) Until the question of ad-interim relief is decided, the Respondents shall not take any coercive action based on the subject speaking Order dated 08th/09th July 2024, against the subject hoarding.
 - (e) The Appellants shall file an undertaking before the trial Court stating that, they will take all care for maintenance of the subject hoarding, so that, it is free from danger to life and property.
 - (f) In the event, the aforestated ad-interim relief is refused by the trial Court, the Respondents shall not take any coercive action for 02 weeks from the date of the order of refusal of the said ad-interim relief, so as to enable the Appellants to file necessary challenge against that refusal, if they so desire or advised for.
- 6) Rule is made absolute in above terms. As a result, the Interim Application No.11745 of 2024 does not survive and is disposed of.
- 7) It is made clear that, this Court has not gone into the merits of the grant/refusal of the ad-interim relief. Therefore, the learned trial Court

is requested to decide the said Notice of Motion including the question of grant/refusal of ad-interim relief on its own merits.

(SHYAM C. CHANDAK, J.)

**PREETI
HEERO
JAYANI**

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.09.13
16:52:58 +0530