

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

**APPEAL FROM ORDER NO. 603 OF 2024
WITH
INTERIM APPLICATION NO.11890 OF 2024**

Mrs. Grace Eldred Fernandes .. Appellant
v/s.
The Municipal Corporation Of
Greater Mumbai And Another .. Respondents

**WITH
INTERIM APPLICATION NO.13593 OF 2024
IN
APPEAL FROM ORDER NO. 603 OF 2024**

Mrs. Ella Perriera .. Appellant
v/s.
Mrs. Grace Eldred Fernandes .. Respondents

Mr. Y.K.Tiwari with Mr. Ankit Tiwari with Mr.Maner
Vishwakarma i/b. K.P.Tiwari & Co. for the Appellant.
Ms. Seena Rawade for the Respondent No.1/MCGM.
Mr. Omar Khaiyam Shaikh for the Intervenor.

**CORAM : SHYAM C. CHANDAK, J.
DATE : 17th OCTOBER, 2024.**

P.C. :

. Heard.

2) Aforesaid Appeal impugning an Order dated 14th July 2024, passed in Draft Notice of Motion in L.C. Suit St. No. 6144 of 2024 subsequently registered as L. C. Suit No.167 of 2024, by the learned Judge of the City Civil Court, Dindoshi, Borivali Division, whereby the said Court

refused to grant ad-interim relief to the Plaintiff.

3) Aforesaid Interim Application No.13593 of 2024 seeking to implead the Applicant therein as party to the aforesaid Appeal and the Interim Application.

4) After hearing the aforesaid Appeal for some time, it was agreed from the Appellant side that if the Respondents file its reply to the said Notice of Motion on the given due date after 23rd October 2024, when the matter is due before the trial Court, the Appellant would press for the ad-interim relief again.

5) Learned counsel for the Applicant in Interim Application No.13593/2024 also wants to assist the trial Court, after his impleadment on the question of legality or otherwise of the suit structure, which is subject matter of the impugned notice under Section 351 of the MMC Act.

6) In the backdrop, the aforesaid Appeal can be disposed of with a direction not to take coercive action against the notice structure until passing of fresh Order as to grant or refusal of ad-interim, as to the suit structure. Appeal from Order is disposed of with following directions:

i) Respondents to file their reply to the Draft Notice of Motion in L.C.Suit No. 167 of 2024 before the trial Court, on the given due date after the said Suit was adjourned on 23rd October 2024.

ii) The Applicant in Interim Application No.13593 of 2024 has already filed a Chamber Summons seeking for his

impleadment in the said Suit before the trial Court.

iii) The trial Court to decide the Chamber Summons first on its own merit and if the Chamber Summons is allowed, give an opportunity to the said Applicant to file his Written Statement and Reply to the Notice of Motion.

iv) The Respondents shall not take coercive steps against the suit structure until passing of fresh Order as to grant or refusal of ad-interim, as to the suit structure.

v) It is made clear that the aforesaid Appeal is not heard on merit, all contentions of all parties are kept open to be considered on its own merit.

vi) The trial Court at its discretion to decide the question of ad-interim relief, once the Corporation has filed its reply, in the Suit.

vii) As a result Interim Application Nos. 11890/24 and 13593/24, do not survive and stand disposed of.

(SHYAM C. CHANDAK, J.)

JYOTI
RAJESH
MANE

Digitally signed by
JYOTI RAJESH
MANE
Date: 2024.10.21
11:00:23 +0530