

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

**APPEAL FROM ORDER NO. 774 OF 2024
WITH
INTERIM APPLICATION NO. 14467 OF 2024
IN
APPEAL FROM ORDER NO. 774 OF 2024**

Manali Sharad Shinde

...Appellant/Applicant

Versus

The Assistant Engineer (Inspection and

Maintenance), Municipal Corporation of Gr. Mumbai ...Respondent

Mr. S. S. Redkar i/b Mr. Swapnil S. Narkar for the Appellant.

Mr. R. Y. Sirsikar for the Respondent-Corporation.

Mr. Asaram Aduskar, Colony Officer, F/South Ward present.

CORAM : M. M. SATHAYE, J.

DATED : 25th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Appellant/Plaintiff and learned Counsel for the Respondent – Municipal Corporation.
2. This Appeal is filed challenging the rejection of the ad-interim relief under order dated 18/10/2024 passed by Judge, Civil Court, Greater Mumbai in the Draft Motion in L.C. Suit No. 6381 of 2024. The suit is filed challenging the impugned notice dated 15/10/2024 issued by the Respondent-Corporation u/s. 314 of the Mumbai Municipal Corporation Act, 1888.

3. Learned Counsel for the Appellant invited this Court's attention to the concerned Annexure II (page 26 dated 07.10.2024) indicating that reason stated for the ineligibility of the Appellant is 'Survey Slip verification is pending'.

4. Learned Counsel for the Respondent-Corporation, on instruction from the concerned officer present in the Court, submits that the Respondent-Municipal Corporation is in the process of preparing supplementary Annexure II.

5. Learned Counsel for the Appellant submits that therefore there is possibility that the Appellant's case may be considered and he may be held eligible and in such circumstances, if the impugned notice is given effect, the whole suit will become infructuous.

6. It must be noted that if the supplementary Annexure II is under preparation, the eligibility or otherwise of the Appellant will come on record after the impugned order. Therefore it can not be considered for the first time by this Court, when the suit is at the stage of the ad-interim relief and it will have to be considered in the pending motion after due opportunity to both sides.

7. It appears from record that on the date of the impugned order, the Respondent-Corporation was directed not to take coercive action based on the impugned notice for a period of 3 weeks and this protection was extended by this Court by order dated 11/11/2024. It is not disputed that as on today, the Appellant's structure is not demolished.

8. In that view of the matter the Appeal is disposed of by passing the following order.

(a) The impugned order is set aside.

(b) The Respondent-Corporation is directed to submit on affidavit, the outcome about the Appellant's eligibility after the supplementary Annexure II is prepared.

(c) Thereafter, The Trial Court will decide the motion on its own merits considering the supplementary Annexure II that will be submitted by the Respondent-Corporation. Rival contentions are kept open.

(d) Till the motion is so heard on merits, the interim protection recorded earlier shall continue.

9. The Appeal from Order and the Interim Application are disposed of in above terms.

(M. M. SATHAYE, J.)