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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 159 OF 2025
WITH
INTERIM APPLICATION ST NO. 22617 OF 2024
IN
APPEAL FROM ORDER NO. 159 OF 2025**

Shekhar Appu Shetty

.....Appellant

Vs.

Municipal Corporation of Greater Mumbai

.....Respondent

Mr. Pradeep J. Thorat i/b Mr. Aditi S. Naikare for the appellant
Mr. Anand Khairnar i/b Ms. Komal Panjabi for respondent BMC

CORAM : GAURI GODSE, J.

DATE : 12th MARCH 2025

ORDER:

1. Pursuant to the directions issued in the order dated 3rd March 2025, the appellant has filed an undertaking dated 7th March 2025 stating that in the event the appellant is unable to succeed in the suit in proving that the offending structure as per notice dated 23rd July 2011 is authorised structure, the appellant shall remove the offending structure as described in the notice.

2. Learned counsel for the appellant submits that the suit is at the

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stage of recording evidence. The suit structure is already protected in view of the interim orders passed initially in the pending notice of motion and thereafter, in view of the order passed by this Court.

3. Considering the dispute regarding existence of nature of the structure described in the impugned notice, validity of the notice will have to be examined and decided after evidence is led in the suit. Hence, in view of the undertaking given by the appellant, I find it appropriate that the interim protection already operating till date, can continue to operate during the pendency of the suit.

4. The assurances given in the undertaking dated 7th March 2025 is accepted as an undertaking to this Court.

5. In view of the aforesaid, appeal is allowed by passing the following order:

ORDER

(I) The impugned order dated 25th July 2024 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Notice of Motion No. 2246 of 2011 in L.C. Suit No. 1986 of 2011 is quashed and set aside.

(II) Notice of Motion No. 2246 of 2011 is allowed in terms of prayer clause (a).

(III) The undertaking dated 7th March 2025 is accepted as an undertaking to this Court.

6. Appeal is disposed of in above terms.

7. In view of disposal of appeal, Interim Application St No. 22617 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]