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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 668 OF 2024
WITH
INTERIM APPLICATION NO. 13271 OF 2024**

Uday Bhanu Co-operative Housing ... Appellant/Applicant
Society Limited

Vs.

The Municipal Corporation of Greater ... Respondents
Mumbai and Another

Mr. Jagdish N. Jayale for the Appellant/Applicant.

Mr. Om Suryavanshi for Respondents- BMC.

CORAM : GAURI GODSE, J.

DATE : 11th FEBRUARY 2025

ORDER :

1. By consent appeal from order is taken up for final disposal.
The appeal is preferred by the original plaintiff to challenge refusal to grant ad-interim relief.

2. Learned counsel for the appellant-society submits that the developer had already filed application for grant of occupation certificate on 1st November 2012 which was never rejected. He submits that the application was filed as per the prescribed procedure, hence without any rejection the corporation has issued

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notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"). He further submits that the allegations in the notice are vague. He further submits that the developer has carried out construction as per the sanctioned plan and thus the notice issued by the corporation is illegal.

3. Learned counsel for the appellant further points out the criminal prosecution initiated by the corporation against the members occupying the building. He submits that however the occupants are acquitted from the criminal prosecution.

4. Learned counsel for the appellant further points out that the architect of the building has also complied with the objection raised by the corporation on the application for occupation certificate. Learned counsel for the appellant therefore submits that the ad-interim relief as prayed for be granted during the pendency of the notice of motion

5. Learned counsel for the corporation submits that the reply to the notice of motion is not yet filed, however, the same will be filed on the next date before the City Civil Court.

6. Since the impugned order is passed without any reply from the corporation, any reasons recorded by this court on the rival

contentions of the parties on merits is likely to cause prejudice to the rival contentions in the notice of motion. The notice of motion is required to be heard and decided after perusing the reply of the corporation.

7. The contention raised by the appellant can be examined only after reply is filed by the corporation. Hence, I find it appropriate that the notice of motion be decided after reply is filed by the corporation. The documents relied upon by the appellant prima facie shows that compliance for getting occupation certificate is already done by the developer and the architect. Hence, I see no reason for not granting ad-interim relief to the appellants.

8. Hence, for the reasons recorded above, the appeal is allowed by passing the following order :

- (i) Corporation shall file reply to the notice of motion on the next date before the City Civil Court.
- (ii) Notice of motion to be decided on its own merits uninfluenced by the observations in the impugned order or any observation in this order.
- (iii) All the rival contention of the parties on merits are kept open.

(iv) During the pendency of the notice of motion the implementation of the impugned notice dated 22nd December 2014, speaking order dated 7th November 2015 and notice dated 7th August 2024 shall remain stayed and no coercive action to be taken against the plaintiff or its members during the pendency of the notice of motion.

(v) Appeal from order is disposed of in the above terms.

(vi) In view of disposal of the appeal, pending interim application is disposed of as infructuous.

[GAURI GODSE, J.]