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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 745 OF 2024
WITH
INTERIM APPLICATION NO. 14132 OF 2024**

Ramprasad Mewalal Gupta and Ors ... Appellants/Applicants

vs.

The Municipal Corporation of Greater ... Respondent
Bombay

**WITH
INTERIM APPLICATION(ST) NO. 23333 OF 2025
IN
APPEAL FROM ORDER NO. 745 OF 2024**

Mr. Aslam Mohammed Idrish ... Applicant
Mohammed

IN THE MATTER BETWEEN

Ramprasad Mewalal Gupta and Ors ... Appellants

vs.

The Municipal Corporation of Greater ... Respondent
Bombay

Mr. Yatin R. Shah for Appellant.

Shri Akash Singh i/b. Mr. Ajit Singh, for Intervenor.

Mr. Om Suryavanshi for Respondent -BMC.

CORAM : GAURI GODSE, J.

DATED : 30th JULY 2025

ORDER:

1. This appeal is preferred by the original plaintiffs to challenge the rejection of the plaintiffs' application for interim relief pending the suit. The suit is filed to challenge the notice dated 1st March 2024 issued by the corporation under Section 351 of the Mumbai

Municipal Corporation Act, 1888. Notice contains a schedule regarding the unauthorised construction and use.

2. Learned counsel for the appellants has tendered an additional affidavit-cum-undertaking on behalf of the appellants. The appellants agreed to remove the unauthorised change as described in Item Nos. 2 and 4 of the schedule of the notice. So far as Item No. 2 is concerned, the appellants have agreed to remove the covering as described in Item No. 2, within 15 days from today. So far as Item No. 4 is concerned, the appellants have agreed that they shall keep the entire parking in the basement free as per the sanctioned plan. The appellants have clarified that the parking in the basement is at the times temporarily used, only for playing tennis and badminton. The appellants have agreed to restore the 1st floor parking to its original position within 45 days. So far as item no. 3 is concerned, the appellants agree to stop the user of lodging on the 7th floor within 15 days.

3. The affidavit-cum-undertaking dated 29th July 2025 is taken on record and marked 'X' for identification with today's date. The assurances and undertakings given in the affidavit-cum-undertaking are accepted as undertakings to this court. So far as Item No.1 in the schedule of the notice is concerned, learned counsel for the

corporation on instructions submits that the corporation be granted liberty to review the allegations in Item No. 1, and if found necessary, issue fresh notice in accordance with law. Considering the affidavit-cum-undertaking by the appellants, the corporation is permitted to review the allegations in Item No.1 of the schedule of the impugned notice and if found necessary, are at liberty to take appropriate action in accordance with law. In the event, action is taken the appellant would be at liberty to raise their contentions as permissible in law. The rival contentions on merits of Item No.1 of the schedule of the notice are kept open.

4. In view of the aforesaid undertaking and the liberty granted to the corporation, nothing survives for further consideration in the appeal as well as the suit. The appellants are therefore permitted to withdraw the suit by producing a copy of this order before the trial court.

5. It is clarified that if the appellants fail to comply with the undertakings as recorded in this order within the time granted, the corporation will be at liberty to implement the impugned notice.

6. The appeal is disposed of in the aforesaid terms.

7. In view of disposal of the appeal, the interim application is disposed of as infructuous.

(GAURI GODSE, J.)