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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 314 OF 2024
WITH
INTERIM APPLICATION NO. 7714 OF 2024
IN
APPEAL FROM ORDER NO. 314 OF 2024**

Nutan Vidya Mandir	... Appellant/Applicant
vs.	
The Chief Executive Officer Maharashtra Housing and Area Development Authority	... Respondent

Mr. Kunal Bhanage a/w. Mr. Ankit, Ms. Richa Dubey Tiwari, Mr. Yash Tiwari, Mr. Akshay Pawar i/b. K.P. Tiwari and Co., for Appellant/Applicant.

Mr. P.G. Lad a/w. Ms. Sayali Apte for Respondent-MHADA.

CORAM : GAURI GODSE, J.

DATED : 3rd JANUARY 2025

ORDER:

1. This appeal from order arises out of an order passed by the City Civil Court refusing ad interim relief. Main prayers in the application for interim relief are for protection of possession and restraining MHADA from demolishing the suit structure. Ad interim relief is refused by referring to possession receipt which indicates

that the possession is already taken by MHADA. The impugned order records that the class rooms in the school that was run by the plaintiff in the suit structure were closed in the year 2013. Considering the prima facie status, the City Civil Court has refused to grant ad interim relief. The notice of motion was adjourned for filing reply.

2. Learned counsel for MHADA submits that affidavit-in-reply is already filed and notice of motion is kept for hearing on 12th February 2025. The prima facie observations of the City Civil Court in the impugned order are disputed by the learned counsel for the appellant. However, at this stage there is no dispute that MHADA is in possession of the suit property.

3. Learned counsel for the appellant however, submits that MHADA may be atleast restrained from demolishing the suit structure. For considering the prayer for restraining MHADA from demolishing the suit structure, it will be necessary to record atleast prima facie findings with regard to the rights of the plaintiff in the suit property. Considering the rival submissions on behalf of the parties at this stage, it is not possible to record any prima facie finding as the notice of motion is still pending before the City Civil Court.

4. On perusal of the reasons recorded in the impugned order, I

do not see any illegality or perversity in the reasons recorded by the City Civil Court for refusing grant of ad interim relief. In view of the disputed facts, the motion will have to be first heard by considering reply that is filed by MHADA after the impugned order is passed.

5. In view of the aforesaid, I do not see any reason to interfere with the discretion exercised by the City Civil Court in refusing grant of ad interim relief. Recording any reasons at this stage, by considering the rival submissions, may prejudice the rival contentions of the parties before the trial court on merits.

6. It is clarified that notice of motion before the City Civil Court shall be heard on its own merits uninfluenced by the observations made in this order.

7. Appeal from order is therefore dismissed. In view of dismissal of the appeal from order, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)