

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

**FIRST APPEAL NO. 1139 OF 2025
WITH
INTERIM APPLICATION NO. 7973 OF 2025**

M/s. Jarakahi Automobiles Pvt. Ltd.

...Appellant/
Applicant

Versus

Municipal Corporation For Greater Mumbai Thr.
Its Commissioner And Ors.

...Respondents

Mr. Prathamesh Bhargude a/w Mr. K. Amol, for the
Appellant/Applicant.

Mr. Pradeep Patil a/w Ms. Pallavi Khale for Respondent No.1.

Mr. Prateek Seksaria, Senior Advocate a/w Mr. Ashish Gatagat, Mr.
Karan Bhadoria and Ms. Archana Gupte i/b for Respondent No.3.

CORAM : M.M. SATHAYE, J.

DATE : 5th DECEMBER, 2025

P.C. :

1. Heard learned Counsel for the parties. Perused the record produced by the parties. Taken up for final disposal by consent of parties.

2. The Appellant is original Plaintiff who had filed Long Cause Suit No. 1215 of 2011 initially against Respondent Nos. 1 and 2/Municipal Corporation and original landlords - Defendant Nos. 3 to 7 (*Mehras*), challenging a notice issued by the Respondent-Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act' for short) dated 14.03.2011 and speaking order dated 09.05.2011.

3. Appellant claimed to be tenant of landlords-*Mehras* in respect of 4 sheds and an open space under three different agreements viz.

agreements dated 01.07.2011, 31.05.2002 and MoU dated 17.09.2004.

4. Initially, by interim order dated 19.12.2011 passed by Trial Court in Notice of Motion No. 1142 of 2011, the Appellant was directed to maintain status quo and not to create third party interest or make additional construction. This order was challenged in Appeal from Order No. 749 of 2013 by landlords-*Mehras*. After hearing both the sides, this Court set aside the interim order dated 19.12.2011 and directed that there shall be no interim relief until the Appellant shows authorization about notice structure. After this order was passed, the structure in question was demolished.

5. The Appellant then amended the plaint and prayed for perpetual injunction against the landlords-*Mehras* not to prevent the Appellant, its directors/servants/customers from entering into the compound from main gate to reach the suit premises and conduct business and earn therefrom. Mandatory injunction was also prayed against the Municipal Corporation directing them to re-construct the notice structure or in the alternative grant permission to reconstruct.

6. During the pendency of the suit, present Respondent No.3 (Runwal Developer Pvt. Ltd.) stepped into the shoes of landlords-*Mehras*. It appears that by order dated 07.10.2021, the Defendant Nos. 3 to 7 (*Mehras*) were deleted and present Respondent No.3 was substituted in their place as Defendant No.3.

7. After hearing both sides and on appreciation on evidence, the suit came to be dismissed on 13.12.2024 by the City Civil Court at Mumbai, which is impugned Judgment and Decree in this appeal. On

24.11.2025, this Court directed that status quo as on that day be maintained.

8. Learned Counsel for the Appellant, Mr. Bhargude fairly accepted that as the structure/s in question regarding which notice under Section 351 of the MMC Act was issued, were already demolished in November and December of 2013, during pendency of the suit, legality of suit-notice or the speaking order is rendered academic. He also states on instructions that the amended prayers a-2 and a-3 regarding reconstruction or permission for reconstruction is not being pressed.

9. Apart from the statement, it has already come on record that the Appellant had applied for regularization of the structure in question in May 2014 itself, thereby accepting that it was unauthorized. The construction is admitted to be raised in 2001 and 2004 (much after datum line). In that view of the matter, considering that subject matter structure is already demolished, I am not inclined to enter the controversy on merits in that regard, including legality of section 351 notice, the same being of no consequence.

10. Learned Counsel for the Appellant, however has seriously contended that the prayer against landlords for injunction must be decided on merits and needs to be considered. He submitted that since the present Respondent No.3-Developer has stepped into the shoes of original Defendant Nos. 3 to 7 (landlords-*Mehras*), Respondent No. 3 is required to be restrained as per amended prayer a-1 and a-4 of the plaint, which read as under:

“a-1) This Hon’ble Court be pleased to restrain the landlords

namely Defendant Nos. 3 to 7 by an order of injunction from preventing the Plaintiff its agents, directors, servants and customers from entering into the said compound through the xxx gate where their security persons are stationed.

x

x

a-4) This Hon'ble Court be pleased to prevent all the Defendants from Plaintiff conducting its business from the said structures, and from earning Plaintiff's bread and butter."

11. Learned senior Advocate Mr. Seksaria appearing for Respondent No.3-Developer invited this Court's attention to paragraph 43 and 44 of the impugned Judgment wherein the Trial Court has held that Appellant/Plaintiff is seeking injunction against landlord restraining him from preventing entry of the Plaintiff and such relief is a dispute between the landlord and tenant and therefore outside the jurisdiction of the City Civil Court owing to Section 33 of the Maharashtra Rent Control Act, 1999. He further submitted that the Trial Court on appreciation of evidence has held that the Appellant/Plaintiff's witness has not stated anything about the obstruction and as such the prayer regarding injunction has no merit. He has also invited this Court's attention to the pleadings in the plaint where, the Appellant/Plaintiff has referred the present Respondent No.3 Developer as new landlord and owner. He submits that considering that the Appellant is treating the Respondent No.3 as landlord/owner, the suit has been rightly dismissed even for the prayer of injunction made before the Court not having jurisdiction.

12. Learned counsel for the Appellant, has placed on record an affidavit which was filed on behalf of Respondent No.3 Developer in

support of its Chamber Summons No. 288 of 2020 by which its substitution was sought in the place of Defendant Nos. 3 to 7 - *Mehras*. Chamber Summons was filed in 2020. Perusal of the statements made in said affidavit indicates that Respondent No.3 Developer has taken a stand that in a suit filed by the Developer against *Mehras*, seeking partition of subject matter CTS No. 68 at village Vikroli, Taluka – Kurla, Mumbai Suburban District (on which present suit premises are situated), Consent Terms were filed by which the said Developer and *Mehras* divided the said CTS number by metes and bounds in the ratio of 2/3rd and 1/3rd respectively by which area admeasuring 15089.89 sq. meters has come to the share of the Developer. It is stated that the Developer shall substitute itself in all the suits filed by and against *Mehras* in respect of various galas situated in 2/3rd portion fallen to its share. It is further stated that the present suit premises fall in the the share of the developer. It is further specifically stated that the rights of the present Appellant will not be prejudiced in any manner by the relief sought in the chamber summons i.e. substitution. Annexure D-1 showing list of galas fallen in the 2/3rd share of said Developer makes a clear reference to suit premises and M/s. Jarakahi Automobiles (Appellant) as a tenant/occupant. Annexure-E makes a reference to present subject matter L.C. Suit No. 1215 of 2011 as a pending litigation. It is therefore clear that Respondent No.3 - Developer treated the present Appellant as its tenant at the relevant time.

13. Learned senior Advocate for Respondent No.3 - Developer admits on instructions that Defendant Nos. 3 to 7 were predecessors of the Developer and there has been attornment. He however submits that the Appellant has ‘abandoned’ the suit premises and tenancy/lease has come to an end by efflux of time. This submission does not find any

basis in the case made out before the Trial Court. Be that as it may.

14. Once the factual position is clear that under the foundational document of consent terms between Respondent No. 3 Developer and *Mehras*, the Developer has accepted the Appellant as tenant of the suit premises, the Developer will be bound by it. Neither surrender by the tenant nor decree of eviction under statutory provisions is available on record in this case. Whether tenancy exists after demolition of leased structures is an issue that will have to be decided by the Court of competent jurisdiction. Also one of the leased premises is an open space. It is also not the case of the Developer that after receiving the suit premises under consent terms, it has terminated the tenancy or has adopted any proceedings under law for seeking the Appellant's eviction. Today, no such adjudication by Court of competent jurisdiction is available.

15. It is clear from the amended prayers in the plaint that Appellant is seeking injunction against landlords restraining them from preventing the Appellant from entering the compound in which premises are situated and further injunction is sought restraining the landlord from obstructing Appellant from conducting its business in the suit premises. These prayers are squarely "relating to recovery of possession" of suit premises as provided under Section 41(1) of Presidency the Small Causes Court, 1882 (as per Chapter VII applicable to State of Maharashtra) and therefore jurisdiction of City Civil Court is ousted, as held by the Hon'ble Supreme Court in **Mansukhlal Dhanraj Jain and Ors. v/s. Eknath Vithal Ogale [(1995) 2 SCC 665]** and thereafter in **Mahadev P Kambekar (d/heirs) Vs. Shree Krisha Woolen Mills [(2020) 14 SCC 505]**. It is material to note that in Mahadev

Kambekar (supra), Hon'ble Supreme Court has taken note of **Nagin Mansukhlal Dogli Vs. Haribhai Manibhai Patel (AIR 1980 Bom 123)** with approval, where it was inter alia held that the words "a licensor and licensee" and "a landlord and tenant" in S. 41 of PSCC Act describe the legal character of the parties which they 'either hold' or 'had once held', as a means of identification or a label to point out the particular rights and obligations which arise out of such relationship: either during its subsistence or after its termination, that is, either during an existing relationship or even when the relationship is terminated.

16. In that view of the matter, the observations of the Trial Court in Paragraph Nos. 43 and 44 so far as it relates to lack of jurisdiction, is found to be justified. Despite holding that it has no jurisdiction, the Trial Court has made a passing remark that there is no evidence about alleged obstruction by the landlord. This observation is without jurisdiction and has to be ignored. So far as the contention of the Appellant/Plaintiff about obstruction either at the hands of original landlords - *Mehras* or present Respondent No.3 - Developer as their successor-in-interest, the Trial Court was not competent to consider the said aspect. Therefore there is no appreciation of evidence in that regard. Obviously therefore there is no material before this Court also to examine its merits. As such, the Appellant will have to approach the Court of competent jurisdiction i.e. Small Causes Court with appropriate prayers regarding injunction or other reliefs, as available under law.

17. In the aforesaid facts and circumstances, there is nothing further to adjudicate in this first appeal.

18. Therefore, the **appeal is disposed of as infructuous with liberty**

to the Appellant to approach Small Causes Court against original landlord - Defendant Nos. 3 to 7 (*Mehras*) or their successor-in-interest-Respondent No.3-Developer or both, for appropriate reliefs. If such proceedings are filed, the same shall be decided on its own merits without being influenced by any observations in the impugned Judgment dated 13.12.2024. Rival contentions of all parties are kept expressly open for decision on merits in accordance with law. No order as to costs.

19. At this stage, a request is made by learned counsel for the Appellant, to continue order of status-quo granted on 24.11.2025 by this Court. Learned senior Advocate for the Respondent No. 3-Developer has strongly opposed the said prayer, contending that when the Trial Court had no jurisdiction to decide lis between the Appellant/Tenant and Respondent No. 3-Developer/Landlord, this Court also does not have jurisdiction to grant interim relief. He submitted that interim relief can be granted only in aid of final relief for which the Trial Court itself was not competent.

20. Admittedly, no interim relief is shown to this Court as having existed in favour of the Appellant and against the Respondent No. 3 during pendency of the suit. This Court is accepting the finding of lack of jurisdiction for dispute between Appellant and Respondent No. 3. In view of such peculiar circumstances, request for continuation of status-quo can not be accepted and it is rejected.

21. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)