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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 92 OF 2025
WITH
INTERIM APPLICATION NO. 1619 OF 2025
IN
APPEAL FROM ORDER NO. 92 OF 2025**

Mr. Kamesh Bhagwan Sajnani
Thr. His LOA Mr. K.V.Rajesh Iyer

.....Appellant

Vs.

Brihanmumbai Municipal Corporation
and anr

.....Respondents

Mr. Shobhit Shukla a/w Ms. Seemran Singh and Ms. Samrudhi Raut
Advocate for the Appellant
Ms. Neeta Jadhav i/b Ms. Komal Punjabi for respondent BMC

CORAM : GAURI GODSE, J.

DATE : 29th APRIL 2025

ORDER:

1. This appeal is preferred by the plaintiff to challenge the dismissal of his notice of motion seeking protection from implementation of the notice under Section 351 of The Mumbai Municipal Corporation Act ('the said Act').

2. Learned counsel for the appellant has tendered two separate

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affidavit-cum-undertakings dated 29th April 2025 executed by the appellant who is the owner of the suit structure and the licensee who is occupying the suit structure. The affidavit states that he shall file an application for regularisation of the offending structure within four weeks. The affidavit further states that if the regularisation application is not favourably decided, he shall remove the offending structure subject to his right to file appeal. The appellant has also undertaken that he shall not carry out any further construction or create any third party rights.

3. The affidavit-cum-undertakings are taken on record and marked as 'X1' and 'X2' with today's date for identification.

4. In view of the undertakings given by the appellant, nothing further survives for consideration in this appeal.

5. Learned counsel for the Corporation submits that it may be clarified that if the undertaking is not abided and regularisation application is not filed, the Corporation shall be at liberty to implement the impugned notice and the speaking order. She submits that it may be also clarified that if the regularisation application is adversely decided and the appellant files any appeal, but if no favourable orders

are passed, the Corporation shall be at liberty to implement the impugned notice and the speaking order.

6. In view of the aforesaid, the appeal is disposed of by passing the following order:

ORDER

I. The undertakings recorded in the affidavit-cum-undertakings are accepted as undertakings to this Court.

II. The appellant is permitted to file an application for regularisation of the offending structure within four weeks from today. If such application is filed, the same shall be decided by the Corporation within four weeks thereafter.

III. Till the decision of the regularisation application, the impugned notice and the speaking order shall not be implemented.

IV. If the decision in the regularisation application is adverse to the appellant, the same shall not be implemented for a period of four weeks from the date of intimation of the decision to the appellant.

V. In the event the appellant fails to abide by the undertakings given and the regularisation application is not filed within the time granted, the Corporation shall be at liberty to implement the impugned notice and the speaking order.

VI. It is further clarified that in the eventuality of filing any appeal against the decision of the regularisation application, if any favourable orders are not passed in the appeal, the Corporation shall be at liberty to implement the impugned notice and the speaking order after expiry of four weeks from the date of intimation of the decision on the regularisation application to the appellant.

7. The appeal is disposed of in aforesaid terms.

8. In view of disposal of appeal, pending applications, if any, are disposed of as infructuous.

[GAURI GODSE, J.]