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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 429 OF 2025
WITH
INTERIM APPLICATION NO. 10552 OF 2025**

Shamim Saleem Shaikh ... Appellant
Vs.
The Brihan Mumbai Municipal ... Respondents
Corporation Greater Mumbai
Through Designated Officer (H-Ward)

Ms. Manjiri Parasnis for the Appellant/Applicant.

Ms. Neeta Jadhav i/b. Ms. Komal Punjabi for the Respondent-
BMC.

CORAM : GAURI GODSE, J.

DATE : 12th AUGUST 2025

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the order refusing to grant ad-interim relief. The appellant has filed the suit to challenge the notice issued under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"). The allegation in the notice is that the appellant has carried out unauthorised addition/alteration by lowering of the

plinth in the parking area i.e. Shop No.2 unauthorised construction of cafe in parking area admeasuring 11 x 3.21 meters.

2. On 29th July 2025, learned counsel for the corporation had made a statement that the structure is partially demolished on 29th July 2025. Learned counsel for the appellant had requested for time to file affidavit-cum-undertaking stating that a proposal for regularisation shall be filed in accordance with law and if regularisation proposal is not favourably decided, the offending structure shall be removed by the appellant subject to the right of appeal. Hence, ad-interim protection was granted and the appeal was directed to be listed on 5th August 2025.

3. On 5th August 2025, learned counsel for the appellant had tendered affidavit-cum-undertaking of the appellant which according to her was in compliance of order dated 29th July 2025 permitting the appellant to file affidavit-cum-undertaking for submitting regularisation proposal. The affidavit-cum-undertaking was filed with a statement that the plan of the corporation shows the subject premises as dispensary and despite the said plan the appellant was

agreeable to apply for regularisation. Hence, considering the allegation in the notice issued under Section 53(1) of the MRTTP Act the conditional affidavit-cum-undertaking tendered in the court was not accepted.

4. Hence, the learned counsel for the appellant had requested for further time to file plain and simple undertaking as was permitted by order dated 29th July 2025. Hence, again ad-interim protection was extended and the appeal was directed to be listed on 12th August 2025. Today, learned counsel for the appellant submits that a fresh affidavit-cum-undertaking dated 7th August 2025 is already filed.

5. I have perused the affidavit-cum-undertaking. The fresh affidavit-cum-undertaking is filed with a statement that if regularisation proposal is rejected, the offending structure would be removed and the original user would be restored. Since the allegation against the appellant is that the parking area is converted into a shop, I do not find it appropriate to accept the affidavit-cum-undertaking which is again with a rider that the original user will be restored. If as per the allegation of the corporation the offending structure is in a parking area, there is no question of restoring the user of the

premises.

6. I have perused the pleadings. The plaint is bereft of any submissions that the structure belonging to the appellant is situated on the place approved in the plan as dispensary. Learned counsel for the appellant relies upon extract of assessment record to support her submissions that the place of dispensary is converted into a shop. However, the said assessment extract cannot be related to mean that the suit structure is not situated on the parking area.

7. Learned counsel for the appellant is unable to point out any pleadings that the structure belonging to the appellant is not situated in the parking area. Learned counsel for the appellant sought to rely upon the observation in the impugned order to submit that the sanctioned plan produced on record by the corporation shows that there is a dispensary on the ground floor. I fail to understand that without proper pleadings in the plaint that the appellant's structure is not in the parking area and that it is situated on the place where in the original plan the dispensary was approved, how the assessment extracts would show that there is no unauthorised construction carried out in the parking area as

alleged by the corporation. Hence, in the absence of any prima facie material to support appellants' contention that the offending structure is not in the parking area, the appellant would not be entitled to any discretionary relief in this appeal.

8. The notice of motion is still pending. Learned counsel for the corporation submits that affidavit-in-reply to the notice of motion will be filed on or before the next date. It is therefore clarified that the notice of motion shall be decided on its own merits in accordance with law.

9. This appeal is therefore dismissed.

10. In view of dismissal of the appeal, interim application is disposed of as infructuous.

[GAURI GODSE, J.]