

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 146 OF 2025
WITH
INTERIM APPLICATION NO. 3178 OF 2025
IN
APPEAL FROM ORDER NO. 146 OF 2025**

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Rajan Prabhakar Potdar ... Appellant/Applicant
vs.
The Municipal Corporation of Greater and ... Respondents
Anr.

Mr. Ashok R. Pande a/w Shobit Shukla for the Appellant/Applicant.
Mr. Om Suryavanshi for Respondent- BMC.
Mr. Sagar Tote, J.E. (B&F) 'C' Ward, Present.

CORAM : GAURI GODSE, J.

DATED : 28th FEBRUARY 2025

ORDER :-

1. Heard learned counsels for the parties.
2. Considering the nature of dispute and the impugned order, the appeal is taken up for final disposal.
3. This appeal is arising out of rejection of ad-interim relief to the plaintiff. The challenge in the suit is to the notice issued under Section 351 of Mumbai Municipal Corporation Act. The allegation in the notice is regarding construction of unauthorized room and loft.

4. Learned counsel for the plaintiff submits that the plaintiff has relied upon a repair plan prepared by MHADA. Learned counsel for the appellant submits that as per the repair plan it is clear that the building was of ground plus two. He, therefore, submits that there is no unauthorized construction.

5. The notice of motion is still pending in the City Civil Court. The corporation has not yet filed reply to the notice of motion. Learned counsel for the corporation submits that a detailed reply to the notice of motion shall be filed on the next date i.e. on 25th March 2025.

6. Considering the documents relied upon by the plaintiff. The motion needs to be decided after the detailed reply of the corporation. There are disputed facts involved. Hence, I do not find it appropriate to record further reasons in this appeal as it is likely to cause prejudice to the rival contentions on merits of the parties in the main suit and the notice of motion.

7. The suit premises are residential premises. Hence, the structure needs to be protected till the decision of the notice of motion.

8. Hence, the appeal is disposed of by passing following order

(I) The corporation shall file reply to the notice of

motion on the next date.

(II) Till disposal of the notice of motion, no action of demolition should be taken based on the notice impugned in the suit.

(III) All the contentions of the parties of both the parties on merits are kept open.

(IV) Notice of motion shall be decided on its own merits uninfluenced by the impugned order or any observations made in this order.

9. Appeal from order is disposed of in the above terms.

10. It is clarified that the parties shall not be granted any unnecessary adjournment and the parties shall cooperate in earlier disposal of the notice of motion.

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

(GAURI GODSE, J.)