

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 3789 OF 2025
IN
APPEAL FROM ORDER ST NO. 2520 OF 2020**

Saad Abdul Qayyum Gazdher

.....Applicant

Vs.

Designated Officer Executive
Engineer (Building and Factory) and anr

.....Respondents

Mr. Kaustubh Patil a/w Mr. Tejas Shah for the applicant
Mr. Om Suryawanshi for respondent-BMC

CORAM : GAURI GODSE, J.

DATE : 18th MARCH 2025

IRESH
MASHAL

Digitally
signed by
IRESH
MASHAL
Date:
2025.03.21
10:36:07
+0530

ORDER:

1. This application is for restoration of the appeal which was dismissed for non-removal of office objections. Learned counsel for the applicant submits that on 11th February 2020, ad interim relief was granted in favour of the applicant, however, subsequently, in view of the conditional time granted to remove office objections, the appeal stood dismissed.

2. Learned counsel for the applicant further submits that the

reasons for non-removal of objections within time are explained in paragraph 5 of the application.

3. On the merits of the appeal, learned counsel for the applicant submits that the suit is filed to challenge the notice issued under section 351 of Mumbai Municipal Corporation Act. He submits that the notice was replied and the appellant had relied upon copy of the sanctioned plan of 1968/69. He, however, submits that in the speaking order, the plan is not even examined and a remark is mentioned stating that the plan being of 1968, the same cannot be considered. He, thus, submits that the appellant, apart from claiming protection on the ground that the structure is in existence since prior to the datum line, the appellant has relied upon copy of sanction plan of 1968/69 to support his contention that the offending structure is not unauthorised. He, therefore, submits that the appellant is entitled to lead evidence to support his submissions that the offending structure is not unauthorised.

4. I have perused the papers of the appeal. The appeal is filed to challenge the refusal of the grant of ad-interim relief. Learned counsel for the appellant submits that the reply to the notice of motion is filed by the corporation, however, the notice of motion is still pending.

5. Learned counsel for the corporation opposes grant of any ad-interim protection on the ground that the appellant has carried out unauthorised construction beyond tenantable repairs. He, further, submits that the particulars regarding tenantable repairs are not pleaded by the plaintiff. He, thus, submits that there is no prima facie material produced by the plaintiff to indicate that the structure is authorised or that it is in existence since prior to 1962.

6. A perusal of the notice impugned in the suit, and the reply filed by the plaintiff along with supporting documents indicates that the appellant has relied upon a sanctioned plan to support his submissions and the assessment extracts. A perusal of the speaking order does not indicate that the concerned designated officer has examined the sanctioned plan relied upon by the appellant.

7. Hence, it is appropriate that the notice of motion is decided after considering the disputed questions on facts and the reply filed by the corporation. The reply filed by the corporation is not examined by the City Civil Court as the same was filed after the ad-interim relief was refused. I, therefore, find it appropriate that the notice of motion be heard and decided after considering the reply filed by the corporation. Any reasons recorded by this Court on merits is likely to cause

prejudice to the rival contentions of the parties in the pending notice of motion.

8. In the facts and circumstances of the case, Interim Application No. 3789 of 2025 is allowed in terms of prayer clause (a), (b) and (c). The appeal from order is restored and is heard for final disposal.

9. The appeal, can therefore, be disposed of by granting ad-interim relief.

10. The appeal is therefore allowed by passing following order:

ORDER

I) The impugned order dated 23rd January 2020 refusing ad-interim relief in LC Suit No. 245 of 2020 is quashed and set aside.

II) During the pendency of notice of motion, no coercive action of demolition shall be taken against the said structure based on the notice impugned in the suit

III) The notice of motion shall be decided on its own merits, uninfluenced by the observations in the impugned order or in this order.

11. Appeal is allowed in aforesaid terms.

[GAURI GODSE, J.]