

Ajay

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

**(3) APPEAL FROM ORDER NO. 489 OF 2025
WITH
INTERIM APPLICATION NO. 11310 OF 2025
IN
APPEAL FROM ORDER NO. 489 OF 2025**

Mumbai Wines and Trade Private Limited	Appellant /
Through Its Dharamraj R. Singh	.. Applicant
Versus	
Municipal Corporation of Greater Mumbai	.. Respondent

**WITH
(33) APPEAL FROM ORDER NO. 505 OF 2025
WITH
INTERIM APPLICATION NO. 11596 OF 2025
IN
APPEAL FROM ORDER NO. 505 OF 2025**

Mumbai Wines and Trade Private Limited	Appellant /
Through Its Dharamraj R. Singh	.. Applicant
Versus	
Municipal Corporation of Greater Mumbai	.. Respondent

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- Mr. Vivek Kantawala a/w. Mr. Saumil Kothari, Mr. Rajat Jain, Advocates i/by M.M. Legal Associates for Appellant / Applicant.
 - Mr. Om Suryawanshi, Advocate i/by Ms. Komal Punjabi for Respondent - Corporation.
 - Dr. Virendra Mohite, Medical Officer of Health present.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 18, 2025.

P.C.:

1. Heard Mr. Kantawala, learned Advocate for Appellant / Applicant and Mr. Suryawanshi, learned Advocate for Respondent - Corporation.

2. The facts in both the Appeal From Orders are identical. Parties are the same. Both establishments are next to each other. Action initiated is identical by the Corporation. Both establishments are shut down. Hence the present common order is passed.

3. In both Appeal From Orders, impugned order dated 18.08.2025 passed by the learned Trial Court refusing ad-interim relief to the Appellant is under challenge.

4. In normal circumstances, this Court adopts the practice of remanding the matter back for determination of interim relief, but the facts situation in the present case and submissions advanced by Mr. Kanatawala persuade me to decide the present Appeal From Orders forthwith. I have heard Mr. Suryawanshi, learned Advocate on behalf of the Corporation also at length.

5. Briefly stated, it is an admitted position that Appellant is running a fine dining restaurant enabling Appellant to serve liquor with a valid permission and license granted by the Statutory Authority which is appended at page No.144 of Appeal From Order No.489 of 2025. This is not disputed by the Corporation. The entire bane of the impugned order proceeds on the premise that Appellant does not have a valid permission for running the “liquor shop” as it is referred to in the impugned order. Appellant is running a fine dining restaurant rather and not a “liquor shop”. The reasoning given by the learned

Trial Court while refusing ad-interim relief is on three specific grounds which are *prima facie* not only contrary to the record of the case which is placed before me but completely unsustainable in law.

6. The learned Trial Court proceeds and states that documents on record show that license is granted to Appellant for eating house by the Municipal Corporation of Greater Mumbai (for short '**MCGM**') and Municipal Corporation has not allowed or permitted to store or sell liquor from the Suit premises (restaurant). This finding as returned is contrary to record, neither it is Corporation's case that the valid liquor permission and license appended at page No.144 is a fabricated document. Infact it is admitted by the Corporation. I say so because in response to the submissions of Mr. Kantawala, learned Advocate for Corporation, Mr. Suryanwanshi has not disputed it. He has drawn my attention to page No.97 at the outset while making his submissions which is the Inspection Report dated 04.08.2025 (prepared by Corporation) and argued that the five derelictions stated therein have been committed by Appellant. None of those derelictions pertain to the case of Appellant running its restaurant without a valid liquor license or the license given to Appellant is only for eating house. The second reason returned in the impugned order is that Appellant has not produced any *prima facie* evidence before the Trial Court in support of its case. I am informed that the entire documentary evidence appended at Exhibit 'E' - page No.94 (Eating License), page No.144 (Liquor

License) and page No.123 (Fire NOC) of Appeal From Order No.489 of 2025 have all been issued by the Corporation and State Government itself were infact produced, but have been conveniently overlooked by the learned Trial Court. While such overwhelming *prima facie* evidence is produced, the said finding is therefore unsustainable. The impugned order suffers from non-application of mind.

7. Thirdly, an innocuous reason is given by the Trial Court while recording the arguments of the Corporation which considers the safety of the public in general and records that storage of liquor without license cannot be allowed since one fire accident had taken place in the same locality some years back and therefore there is a threat to life of public in general. The said ground stated in paragraph No.6 deserves to be rejected on the face of record itself as it proceeds on a completely wrong footing. It is unsustainable considering the contrary overwhelming evidence placed on record.

8. *PER CONTRA*, Mr. Suryawanshi, learned Advocate for Corporation would argue that the license issued to Appellant is for an area of 170 square meters but Appellant was using the appurtenant area thereto admeasuring approximately 286.64 square meters additionally for serving food. This infact is the Corporation's only case at the highest and nothing more. He has referred to page No.97 which is the Inspection Report of the Corporation dated 04.08.2025 when

Officers of the Corporation for the first time visited the subject premises of Appellant. The said Inspection Report itself confirms the above factual situation. If that be the case, then the finding recorded in paragraph No.6 in the impugned order is *prima facie* incorrect, arbitrary, high handed and deserves to be set aside at the outset. On page No.97, Mr. Suryawanshi would argue that there are certain non-compliances. Three of the non-compliances, *inter alia*, pertain to non-production of valid NOC for fire compliance of the subject premises. It is alleged by Corporation that an outdated fire compliance certificate has been presented. Answer to this is that Appellant has appended at page No.123 the fire NOC granted by the Fire Department of the State Government itself which *prima facie* is in compliance with the three derelictions alleged by the Corporation. The fourth dereliction is about an unauthorized kitchen alleged to be in operation without requisite permission. There is no description or preciseness with respect to the same, but on the basis of the photographs which are placed before me, it would be assumed that the reference is to a dry kitchen in the said additional area utilised by Appellant for which the Corporation has taken the impugned action. The additional area pertains to area approximately 286.64 square meters. Appellant has argued that its regularization Application for use of the said additional area is already pending with the Corporation. Appellant has informed that it has now removed the said kitchen. Mr. Kantawala would inform the Court that

there is no such kitchen operating in the additional area and the only kitchen that was in operation was inside the premises for which the license has been issued. He would submit that the open space between the two units of Appellant was used, but pursuant to the impugned action it is removed. He undertakes not to use it until permission is received from the Corporation.

9. On the face of the above derelictions, the impugned action has been taken. The degree of high handedness of Corporation Officers is required to be noted by the Court primarily because this should serve as an inference and signal to the Officers of the Corporation that they cannot take law into their own hands in the manner in which it has been done in the present case. If the Corporation Officers who are statutory Officers behave in such fashion, it sends a wrong signal to the public at large as also people associated with trade and business. Appellant's restaurant sustains the livelihood of 70 staff members and their families. It is even according to Corporation's record running with a valid license. The impugned action taken by the Corporation therefore is such that it is shocking to the core.

10. It is seen from the record that on the eve of 04.08.2025 which was Monday, the Corporation Officers swung into action with alarming alacrity and visited the restaurant. There they prepared an

Inspection Report dated 04.08.2025 appended at page No.97, issued a show cause notice dated 04.08.2025 appended at page No.98 bearing inward No.486A, issued a suspension notice dated 04.08.2025 appended at page No.99 bearing inward No.490 which action finally culminated by issuing a seizure notice dated 04.08.2025 appended at page No.100 to the Appeal From Order bearing inward No.486. Such kind of action on behalf of the Corporation on the same day with such swiftness is indeed encouraging otherwise but only in cases of gross illegalities and derelictions which deserve such action. Not in the case at hand. *Prima facie* the seizure notice on the face of record bears an inward No.486 which means that it is issued prior to the suspension notice whose inward number is 490

11. *Prima facie*, in view of the factual submissions which are noted herein above supported by the documentary evidence, the aforesaid action taken on the same day i.e. on 04.08.2025 is arbitrary and illegal *qua* the shutting down of the entire restaurant business establishment of the Appellant. The impugned order by recording that there is no valid license to serve liquor has compounded the illegal action of the Corporation. Rule of law prevails and Statutory Officers are required to act in consonance with the due process of law. Section 394 of the Mumbai Municipal Corporation Act, 1888 which is referred to by Mr. Kantawala itself states that if any show cause notice is issued, reasonable time is required to be given to the derelicting party to take

such measures. Here by virtue of the impugned action, all done on the same day, the Corporation has shutdown the entire business establishment of Appellant. Justification of the Corporation action to the extent of Appellant's derelictions, if any, pertaining to usage of additional area can only be justified, if so proven, subject to issuance of show cause notice and thereafter following the principles of natural justice. The manner and fashion in which the Corporation Officers have acted on the same day by issuing the aforesaid four processes to Appellant clearly smack of arrogance and oddity. It resembles high handedness, arbitrariness and therefore requires intervention of the Court. Similar action is taken on completely different facts for delay in non-renewal of eating license against Appellant in the companion Appeal from Order proceedings.

12. The impugned order which is passed has not considered the aforesaid factual issues at all, neither the documentary evidence which is appended which infact are the licenses issued in favour of the Appellant. Though I am persuaded by the Advocate for Appellant to invoke strict action against the Corporation Officers, in my opinion, that may not be the right course of action especially because the Appellant's restaurant is not the only restaurant operating in this city. There are hundreds of such restaurants. Further it is noted that even the Appellant was wrong in using the additional appurtenant area for serving liquor without permission which it has accepted. The idea is

that an appropriate signal has to be sent to the Statutory Officers that they should follow the due process of law if they are to invoke such drastic and extreme action of shutting down a running business establishment especially when the said establishment has been issued valid licenses by the Corporation and the State Government itself. All that the Corporation Officers ought to have done was to allow Appellant to adhere to the show cause notice, heard the Appellant and allowed him to correct the wrong and only then taken the extreme measure of shutting down the entire establishment.

13. This Court does not subscribe to the method and manner in which the Corporation Officers have acted in the present case whereby on the same day itself on 04.08.2025 they have issued the aforesaid four processes which are also strictly not in order as observed above and shut down the entire establishment despite there being a valid license to run the same.

14. Be that as it may, the impugned order in view of the aforesaid findings based on overwhelming documentary evidence is completely unsustainable and it is therefore quashed and set aside. However, in view of the aforesaid findings, both Appeal From Orders are heard forthwith and in view of Corporation's own documents and action taken as noted in its own Inspection Report appended at page No.97 of the Appeal From Order, I am inclined to pass the following order.

15. Before I pass the directions, it needs to be mentioned that whenever Corporation or State Government issues licenses, the Authorities look into every minutest detail before issuing a license. One such example before me is the present case itself. It is seen that while issuing the license to Appellant which is appended at page Nos.123 to 125 for fire NOC it has been certified and noted that adequate and prescribed numbers of smoke detectors, heat detectors, hooters, fire alarm panel board, fire extinguishers, fire buckets and gas leak detectors have been installed prior to applying for license by Appellant and only thereafter it is certified by the Fire Department before issuance of fire NOC. The fire NOC to Appellant has also been issued which is appended from page Nos.121 to 125 onwards certifying installation of all the aforesaid things. It also needs to be mentioned that the fire certificate has been issued by the Directorate of Maharashtra Fire Services, Government of Maharashtra which is appended at page No.125. When such is the case, 3 out of the 5 derelictions alleged against the Appellant are *prima facie* false and therefore clearly unsustainable.

16. In view of the above, the impugned action of the Corporation requiring the Appellant to shutdown the restaurant business due to the impugned action taken on 04.08.2025 as alluded to herein above requiring compliance from Appellant is directed to be set aside forthwith. *Prima facie* the aforesaid action of the Corporation of

issuing four processes for shutting down of Appellant's restaurant on the same day is predetermined course of action.

17. Appellant is permitted by Court to open its restaurant establishment forthwith to the extent of the valid area of 170 square meters on the basis of the valid license possessed by the Appellant for that area and run the said restaurant strictly in accordance with law on the basis of the valid licenses issued to the Appellant.

18. In so far as the derelictions alleged by the Corporation are concerned, which are seen from page No.97 read with page No.136, it is directed that Corporation, if so desired after taking into account this order, may issue a fresh show cause notice to Appellant within a period of one week from today if any towards any derelictions that may continue after taking into account the valid licenses and documents which are appended to the present Appeal From Order issued by the Corporation and the State Government. Whatever may be the derelictions, if they exist Appellant shall have to comply with the same strictly in accordance with law and the Corporation shall pass a reasoned and speaking order only after hearing the Appellant within a period of four weeks after the reply to the show causes notices is filed by the Appellant.

19. In view of the above, show cause notice dated 04.08.2025, suspension notice dated 04.08.2025, seizure notice dated 04.08.2025

and the impugned order dated 18.08.2025 stand quashed and set aside. Advocate for Appellant has informed the Court that in view of the above order passed nothing survives in the Civil Suit before the Trial Court and Appellant has given instructions to withdraw the Suit. The Suit is allowed to be withdrawn before the Trial Court with liberty to the Corporation to take action against the Appellant strictly in accordance with law only and by following the due process of law.

20. If Appellant has made any Application for usage of the excess area in accordance with law, the same will be considered by the Corporation, hearing will be given by the Corporation thereto strictly in accordance with law and the same shall be decided by a reasoned and speaking order within a period of one week from today positively. I am informed that copy of this Application is appended on page No.104. If Appellant desires to supplement the same with additional documents, it can do so within a period of one week.

21. Needless to state that the excess area shall not be used by the Appellant for the purpose of serving food for which Appellant does not possess a valid license for the present until its pending Application is decided.

22. With the above directions, Appeal From Order and Interim Application are disposed.

23. All contentions of the parties are expressly kept open.

**APPEAL FROM ORDER NO.505 OF 2025
WITH
INTERIM APPLICATION NO.11596 OF 2025**

24. This establishment of Appellant is adjacent to the restaurant establishment. It has a valid eating license issued since the year 2021. The grievance in the present Appeal From Order is that Appellant made Application for renewal on the online portal of the Corporation for seeking renewal of the eating house license but the online portal was not accessible when it made the Application. According to Corporation the Application was not made within the timeline prescribed for renewal of the eating license for the said premises as there was a delay on the part of Appellant for making the Application for renewal. Appellant's case is that it is running this eating place having a valid eating license since the year 2021. Mr. Kantawala would submit that if there is a delay in applying for renewal, it cannot take away the substantive right of the Appellant for seeking renewal and Appellant cannot be precluded from making an Application and the delay will have to be condoned. He would submit that the reason of delay may be valid, but that cannot oust the remedy available to the Appellant for renewal. He would submit that Applicant's right for renewal cannot be ousted due to the above reason. He would persuade the Court to see that due to the issue of usage of excess area by the Appellant of its neighbouring adjacent premises, the Appellant has faced the issue of renewal in this adjacent area also. Now since the

Application was required to be made online and the portal has shut, in the above facts and circumstances the Corporation is directed by the Court to take the offline Application from the Appellant for renewal in accordance with law Mr. Suryawanshi has taken instructions from the Officer present in Court and would fairly submit that offline copy of Application shall be received by the Corporation if filed. The said Application be made by the Appellant to the Corporation within a period of one week from today strictly in accordance with law, if so desired.

25. The Corporation shall inform the Appellant what are the requirements for making such an Application offline so that Appellant is not required to once again rush to the Court for seeking any relief further. Subject to the Application of the Appellant, the said eating license shall be considered for renewal on all compliances, if any, be it penalty or any other condition strictly in accordance with law by the Corporation and it shall determine the same within a period of one week thereafter positively.

26. The Competent Authority of the Corporation in-charge of the above renewal process shall take cognizance of this order and ensure that there is no delay in determining the Application for renewal of the eating license.

27. All contentions of the Appellant and Corporation are expressly kept open without giving any imprimatur or opinion on merits in the present matter for renewal of the license. Parties to act on a server copy of this order.

28. Considering that same course of action is adopted by the Corporation in regard to this eating establishment also by issuing Inspection Report dated 04.08.2025, show cause notice dated 04.08.2025 and suspension notice dated 04.08.2025 and seizure notice dated 04.08.2025, all on the same day, resultantly leading to closure of the Appellant's eating establishment, the same are quashed and set aside. The impugned order in this Appeal From Orders passed by the learned Trial Court is also quashed and set aside. Appellant makes a statement that in view of above order nothing survives in the Suit before the Trial Court and the Suit shall be withdrawn which is permitted. Appeal From Order is allowed accordingly.

29. With the above observations and directions, both Appeals From Order are allowed and disposed. Interim Application, if any, are accordingly disposed.

[MILIND N. JADHAV, J.]

Ajay

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