

Digitally
signed by
HUSENBASHA
RAHAMAN
NADAF
Date:
2025.12.24
11:14:57
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13593 OF 2025
(STAY)
IN
FIRST APPEAL NO. 2437 OF 2025

Imran Abdul Sattar Kirkire ...Applicant
In the matter between
Imran Abdul Sattar Kirkire And Ors. ...Appellants
Versus
The Municipal Corporation
Of Greater Mumbai And Ors. ...Respondents

AND

INTERIM APPLICATION NO. 13596 OF 2025
(STAY)
IN
FIRST APPEAL NO. 2438 OF 2025

Mohammad Aslam ...Applicant/Appellant
Versus
The Municipal Corporation
Of Greater Mumbai And Ors. ...Respondents

Mr. Amrut Joshi a/w Mr. Yazad Udwadia i/b CUE Legal for the
Applicants in both applications.
Mr. Pradeep Patil for the Respondent/ MCGM in both applications.

CORAM : M.M. SATHAYE, J.

DATE : 23rd DECEMBER, 2025

P.C. :

1. Heard learned counsel for the parties.
2. IA/13593/2025 is filed seeking interim stay to the impugned Judgment and Decree dated 04.09.2025 passed by City Civil Court at

Mumbai in L.C. Suit No. 337 of 2008 and for continuation of the interim protection granted by the Trial Court on 18.02.2008. Applicant/Appellant herein is occupier of flat No.2 situated at Ground Floor of Sunshine Building (Madina Mansion), 81, Veer Sawarkar Marg, Mahim, Mumbai 400016.

3. IA/13596/2025 is filed seeking stay to the impugned Judgment and Decree dated 04.09.2025 passed by City Civil Court at Mumbai in L.C. Suit No. 874 of 2008 and for continuation of the interim protection/relief granted by the Trial Court on 02.01.2008. Applicant/Appellant herein is occupier of Shop No.5 situated at Ground Floor of same building.

4. The Applicants are Plaintiffs in the respective suits filed challenging notices issued by Respondent No.1/Municipal Corporation dated 03.10.2007 under Section 351 of the Mumbai Municipal Corporation Act and speaking orders passed thereon 19.12.2007 in L.C. Suit No. 337 of 2008 and L.C. Suit No.874 of 2008.

5. The suits filed by both the Applicants are dismissed holding that Applicants have failed to prove that suit notices and speaking orders are illegal. Case of both the Applicants is that the notice structures are authorized, being in existence prior to datum line and it is not permanent construction.

6. Learned counsel Mr. Joshi, appearing for the Applicants submitted that this is a case where foundational document of sanctioned plan is not produced by the Respondent Municipal

Corporation and under Right to Information Act a query by the Applicants (in IA/13593/2025) has resulted into response that the survey sheet of the concerned property is in torn condition and as such, the concerned file cannot be traced out. He submitted that the flat was taken on rent from earlier owner in the year 1994. Shop No. 5 is also tenanted from earlier owner. That the Applicants have no access to sanctioned plans. Thereafter, the premises were purchased by present landlord. He submitted that suit notices are issued at the instance of owner/landlord. He submitted that the landlord himself has stated in his affidavit in support of Chamber summons, that “*he purchased the Suit building from earlier owner Mrs. Senjit, under MoU of September 1996 and conveyance of August 2006 and that originally there was an open-to-sky passage or gangway adjacent to shop number 1 to go to rear-side open-to-sky compound of the building; however recently it is reliably learnt that prior to his purchase, the said open-to-sky passage / gangway was encroached with a full fledged shop no. 6 constructed illegally and way to go to rear-side is completely closed, depriving right to use his own property*”. He submitted that this case is made out in 2008 when rent is being collected by this landlord from 1996 it is purchased in August 2006.

7. He relied on the judgment of ***Patricia Farrell Fernandes Vs. Commissioner of Mumbai Municipal Corporation of Greater Mumbai and Ors. [MANU/MH/1469/2025]*** in support of his case that the Respondent/Municipal Corporation has failed to produce best evidence of sanctioned plan which creates doubt about the

foundation of the impugned notices alleging unauthorized construction and therefore adverse inference is required to be drawn. Relying on a case of ***Mohammad Hanif Mohammad Ibrahim Patel & Ors. Vs. Pallaviben Rajendra Kumar Patel & Ors. [Special Leave Petition (C) No. 27549/2025]***, order dated 18.11.2025. He submitted that just because the original suit is dismissed, it does not mean that in the pending appeal, the Appellate Court cannot grant appropriate relief.

8. Learned counsel for the Respondent/Municipal Corporation, on the other hand, opposed grant of interim relief and made following submissions. Inviting this Court's attention to the Roznama dated 16.02.2015 in L.C. Suit No. 337 of 2008, it is contended that the motion was simply tagged with the suit because there was no continuation of the earlier order of status quo during pendency of the suit. Relying on the admissions extracted from Appellants' witness in the oral evidence, it is submitted that if the property is purchased without any inquiry about sanctioned plan, the Respondent - Municipal Corporation cannot be faulted. Inviting the Court's attention to Assessment Remarks of December 2007 issued on behalf of the Corporation, it is contended that the notice structures (extension) to flat No.2 and shop no. 5 - AC shed is assessed from 01.04.2000, it is submitted that even accordingly to records, the suit structures are not prior to datum line. He submitted that in the evidence of Municipal Corporation it is clearly mentioned that the site was inspected by the officer of the Municipal Corporation and on noticing the unauthorized work, a letter was issued asking the

Applicants to prove the sanction/authorization, however, they have failed to produce the same. He submitted that the suit notices clearly indicate that permanent construction is done in a passage of the building and therefore interim protection cannot be continued.

9. I have considered rival submissions and perused the record.

10. There is no dispute about this proposition stated by the Hon'ble Supreme Court in **Mohammad Hanif Mohammad Ibrahim Patel (supra)** that just because suit is dismissed, it does not mean that in pending appeal, Appellate Court can not grant appropriate relief. However, interim relief in appeal depends on the facts and circumstances of each case and cannot be governed by a straight-jacket formula. For that, this Court has to consider facts of this case.

11. From Roznama dated 16.02.2015 in both suits, it is clear that interim protection was not continued in favour of the Applicants till the hearing of the suit. Suit notices allege that rear-side passage of the building is covered with AC sheet roofing and MS angles and there is BB Masonary wall structure with SS grill above, a bathroom is constructed with ladi-coba. Perusal of the impugned Judgments indicate that panchanama was drawn during pendency of the suit, which recorded that the suit structure is made about AC sheet roofing and MS angles, recovering rear side of passage of the building. In the panchanama, it is recorded that the suit structure is permanent structure and the rear passage of the building is blocked thereby excluding the right of other persons in the building.

12. On appreciation of the evidence, the Court has come to

conclusion that the structure in question blocks open passage of the society and it is of permanent nature.

13. Admittedly, sanction is not produced on record. The case of the Applicants is that the structure is tolerated, as existing prior to datum line (1961-62) and it is of temporary nature.

14. Firstly, contention that the suit structure is temporary in nature, is found to be factually incorrect in the teeth of panchanama and what is recorded therein. It has come in the cross-examination of the Appellant's witness that no sanctioned plan is produced on record. It is admitted by the witness that at the time of purchase of the property, predecessor has not made any application to the Municipal Corporation for obtaining copy of sanctioned plan. It is further admitted that no application was made for obtaining the sanction plan. The witness has admitted that open place of the building was already covered at the time of taking premises on rent.

15. Respondent Municipal Corporation has produced on record its assessment remarks in respect of suit structures issued in December 2007. They clearly indicate that suit structures are assessed from 01.04.2000. In the teeth of this remark, it cannot be stated that the notice structure is tolerated structure being prior to datum line (1961-62). The witness for the Applicants has also admitted the assessment extract Exh.13 is for the year 2000-01. In view of this, it can not be said that Municipal Corporation has not produced foundational document.

16. Perusal of the oral evidence of Respondent No.2(d) (owner)

indicates that he is co-owner of the suit building. He has stated that there was an open-to-sky passage / gangway adjacent to shop No.1 to go to the rear-side open-to-sky compound. He has stated that the said open-to-sky passage is encroached by unlawfully constructing in the gangway. He has stated that the rear-side of the compound is completely closed depriving the owner of his right to use his own property.

17. It is also material to note that Appellant in FA/2438/2025 (shop no. 5) has stated in plaint itself that his proposal for regularization was accepted in principle. This itself means that said Appellant has accepted that the suit structure is unauthorized. He has conveniently not stated from whom he received tenancy.

18. In the aforesaid facts and circumstances there is absolutely no *prima facie* case in favour of the Appellants for grant any interim protection about suit structures in first appeal, after it was discontinued during pendency of suits from February 2015.

19. So far as reliance upon the case of **Patricia Farrell Fernandes (supra)** is concerned, facts of the said case are clearly distinguishable in as much as, in the said case, the landlord has admitted that he is not aware of the exact area of which the Plaintiff was put in possession. There were certain admissions about area. In that context, the learned Single Judge of this Court has held that the Defendant having failed to produce best evidence of sanctioned plan and assessment remarks, adverse inference has to be drawn because doubt is created about very foundation of the suit notice. Learned

Single Judge has clarified in paragraph No.55 that in each case validity of Section 351 notice cannot be tested only on the ground whether the noticee/Plaintiff proves that the notice structure authorized or tolerated. It is therefore clear from paragraph No.55 that, the view taken by the learned Single Judge was in the peculiar facts of that case. In the present case at hand, no such admission of the landlord about area or about he being not aware of the situation, is brought to the notice of the Court. Also, in the present case, the assessment remarks are brought on record by the Municipal Corporation, clearly falsifying the Appellants' case of structures being prior to datum line. Present case being completely different on facts, is not covered by the judgment of **Patricia Farrell Fernandes (supra)** and therefore said judgment will not help the Applicants.

20. In the facts and circumstance narrated above, this is not a fit case to grant any interim relief in favour of the Applicants. In that view of the matter, the interim applications are dismissed.

(M.M. SATHAYE, J.)