IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 720 OF 2026

Suresh Dattu More Thr CA
Zaheer Usman Wadia — Appellant

Versus

The. Municipal Corporation Of
Greater Mumbai and Another — Respondents

WITH
INTERIM APPLICATION NO. 5554 OF 2026

Suresh Dattu More — Applicant

Versus

The. Municipal Corporation Of
Greater Mumbai and Another — Respondents

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Shobhit Shukla, Advocate for the Appellant.

Ms. Smita Tondwalkar, Advocate for the Respondent/BMC.

CORAM: AARTI SATHE, J.

DATE: 17th AUGUST 2026.

P.C.

1. Heard learned counsel for Appellant (Original Plaintiff) and learned Counsel for Respondents (Original Defendant). This Appeal from Order under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure, 1908 ("CPC") takes exception to the order dated 15th July 2026 passed by the Learned Judge, City Civil Court, Bombay ("Trial Court") in Notice of Motion No. 3046 of 2026 in L.C. Suit No.

1247 of 2026, whereby the Trial Court has dismissed the Notice of Motion No. 3046 of 2026 filed by the Appellant (Original Plaintiff).

2. Mr. A. Y. Sakhare, Senior Advocate along with Mr. Shobhit Shukla appears on behalf of the Appellant (Original Plaintiff) and Ms. Smita Tondwalkar appears on behalf of the Respondents (Original Defendant).

3. Briefly the facts are as follows:

i. The Appellant (Original Plaintiff) is the owner in respect of building no. 38-40, V. V. Chandan Street, CTS No. 739 of Mandvi Division, Mumbai - 400003 (hereinafter referred to as "the structure"). It is the Appellant's (Original Plaintiff's) contention that the said V. V. Chandan street was earlier known as D'Souza street and the said street was renamed as Vitthaldas Chandan street commonly known as V. V. Chandan street and the said renaming was done sometime around the year 1960. On 24th May 2024, the Respondents (Original Defendant) issued notice under Section 353B of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the Act") and directed the owner to submit the structural audit report.

ii. The Appellant (Original Plaintiff) being the owner of the aforesaid structure through the License Surveyor carried out the structural audit of the building and in the said audit report it was concluded that minor repairs were required for the structure and the said structure was categorized as C-3 i.e. "No Eviction - needs minor repairs". On 24th March 2025 the Administrative Officer of the Building and Proposal Department, in response to the Appellant's (Original Plaintiff's) representative who had filed an RTI application on 11th February 2024 to seek certain documents, informed the Appellant (Original Plaintiff) that the documents containing to file No. EB/1419/B of

1968 were available in the aforesaid office and could be obtained upon payment of the requisite charges.

iii. On 31st July 2025, Respondents (Original Defendant) issued notice under Section 354A of the Act stating that "unauthorized structural repair to back side portion of building without permission from the competent authority of the BMC" had been undertaken by the Appellant (Original Plaintiff), and sought to demolish the aforesaid alleged unauthorized structural repair. Thereafter on 4th August 2025, the Respondents (Original Defendant) once again issued a notice exercising powers under Sections 351, 352, 352A and 354A of the Act directing that the Appellant (Original Plaintiff) stop the erection of the said building / execution of the said work and forthwith submit the permission granted by a competent authority in favour of the Appellant (Original Plaintiff) for the erection of the said building and for execution of the work within 24 hours to the office of the Respondents (Original Defendant). By way of aforesaid notice, it was also informed to the Appellant (Original Plaintiff) that if the erection of the building or the execution of the work of the building is not stopped forthwith or permission/approval of the competent authority in favour of the erection of the said building or execution of the work is not produced within 24 hours from the service of the said notice, the said building/work would be removed or pulled down and all the material, machinery, equipment, devices or articles used for the process of erection of the said building or execution of the said work would be removed from the sight at the risk and cost of the Appellant (Original Plaintiff).

iv. Thereafter on 14th August 2025, the Respondents (Original Defendant) issued a notice directing the Appellant (Original Plaintiff) to remove the existing work

within 15 days of receipt of the said notice failing which the alleged unauthorized work would be demolished by the Respondents (Original Defendant) at the risk, cost and consequence of the Appellant (Original Plaintiff).

v. On 2nd December 2025, the Appellant (Original Plaintiff) through their Advocate submitted a detailed reply along with the documents available with the Appellant (Original Plaintiff) denying the allegations in the said notice and stated that the work of repair to the building was completed even before the notice dated 31 st July 2025. The Appellant (Original Plaintiff) submitted documents received under RTI and entire file of CS No. 793 for addition/alteration filed by the earlier owner for Intimation of Disapproval ("IOD") dated 16th May 1969 and commencement certificate dated 16th May 1969 and plans attached with the file in addition/alteration.

vi. Thereafter on 16th April 2026, the Respondents (Original Defendant) passed a speaking order and held that the documents submitted by the Appellant (Original Plaintiff) did not go to prove that any permission from any competent authority for ongoing work had been submitted by the Appellant (Original Plaintiff) and therefore directed the Appellant (Original Plaintiff) to discontinue the use of notice structure and remove or restore the unauthorized work mentioned in the referred notice immediately from the receipt of the said notice failing which the same would be demolished by the Respondents (Original Defendant) entirely at risk and cost of the Appellant (Original Plaintiff).

vii. Thereafter the Appellant (Original Plaintiff) moved the learned City Civil Court by filing L.C. Suit No. 1247 of 2026 and also filed Notice of Motion No. 3046 of 26 seeking a temporary injunction restraining the Respondents (Original

Defendant), their officers, servants, agents and all persons claiming through them from taking any coercive action in respect of the said structure.

viii. On 15th June 2026, the Respondents (Original Defendant) filed a detailed reply and relied upon documents i.e. Preliminary Inspection Report dated 22nd July 2025, photographs and sanctioned issued notices. On 15th July 2026, by way of the impugned order, the learned Trial Judge was pleased to dismiss the Notice of Motion filed by the Appellant (Original Plaintiff) against which the present Appeal from Order has been preferred.

viii. The case of the Appellant (Original Plaintiff) before the Trial Court was primarily to the effect that the action on the part of Respondents (Original Defendant) was incorrect and the structural audit of the building was conducted on 13th January 2025 which clearly showed that the building was categorized in C-3 category i.e. "No Eviction, need minor repairs". The Appellant (Original Plaintiff) therefore contended that the said minor repairs and tenantable repairs as mentioned in the structural audit report requires no separate permission from the Building and Proposal Department and hence, the repair works were carried out by the Appellant (Original Plaintiff). It was also submitted that on 2nd September 1968 the earlier trust who was owner of the said building appointed architect and submitted proposal under Section 342 of the Act for repairs of the building and submitted plans which clearly showed the existence of the building comprising the Ground Floor, Mezzanine Floor, and First to Eighth floor. It was further contended that on 16th May 1969, the Executive Engineer, Building and Proposal Department issued IOD and also issued a commencement certificate for the said building. It was further contended on behalf of the Appellant (Original Plaintiff)

that notice under Section 354A of the Act could be issued only when work is in progress, and considering that the building was in existence and tenantable repairs had been carried out much prior to the issuance of notice, the said notice dated 31st July 2025 itself could not be issued. The Appellant (Original Plaintiff) submitted that the said notice also was a vague notice which did not clarify what is structural repair and what are the exact measurements which the Respondents (Original Defendant) seeks to classify as unauthorized structures and repairs to that unauthorized structure, which vitiates the entire notice itself. Further, learned counsel on behalf of the Appellant (Original Plaintiff) submitted that the impugned order dated 15th July 2026 had nowhere dealt with the aforesaid contention of the Appellant (Original Plaintiff) that the notice dated 31st July 2025 was a vague notice not specifying any details. Learned counsel for the Appellant (Original Plaintiff) also submitted that the speaking order dated 16th April 2026 had discarded the documents submitted by the Appellant (Original Plaintiff) and therefore, could not be relied upon. He therefore submitted that no prima facie view was formed by the Trial Court on appreciation of facts and record before dismissing the Notice of Motion. He further sought to place reliance on the decision of this Court in the case of Goverdhan Ramnaresh Singh Vs. The Municipal Corporation of Greater Mumbai[1], to submit that if by the time the notice under Section 354A of the Act has been issued, the work/repairs have been completed, then the said notice could not be issued.

ix. Ms. Smita Tondwalkar, learned Advocate for the Respondents (Original Defendant) opposes the present Appeal primarily on the ground that no permission

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1 Order dated 15th April 1999 in Appeal from Order no. 257 of 1999

had been granted to the Appellant (Original Plaintiff) prior to carrying out the repairs to the said building/structure. She therefore submitted that the notice dated 31st July 2025 under Section 354A of the Act was correctly issued and further sought to place reliance on the Inspection Report dated 22nd June 2025 and the photographs which according to her proved, that unauthorized structural repair to the back side portion of the building/structure without permission from competent authority of the Respondent Corporation was sought to be made by the Appellant (Original Plaintiff).

4. I have considered rival submissions and perused the record. On perusal of the documents and the impugned order, it is quite clear that the impugned order does not record any finding with respect to the documents submitted by the Appellant (Original Plaintiff) i.e. the permissions taken by the earlier owner i.e. the Trust in respect of repairs to be carried out to the said Structure. The Trial Court has also not rendered any finding in respect of the structural audit report dated 13 January 2025, which categorically came to the conclusion that the said building is a C-3 structure i.e. "No Eviction - needs minor repairs" which showed that the building required minor repairs. The Trial Court further failed to consider the Appellant's (Original Plaintiff's) contention that the notice dated 31st July 2025 issued under Section 354A of the Act did not give the exact details, measurements and/or specifications of the unauthorized structural repair and only a vague and omnibus statement regarding the unauthorized structure has been made in the notice.

5. The Trial Court has also failed to consider that when the notice was issued under Section 354A of the Act, there was no work in progress i.e. repairs which were being carried out by the Appellant (Original Plaintiff). I am further of the view that the

reliance placed by learned counsel on behalf of the Appellant (Original Plaintiff) on the decision of Goverdhan Ramnaresh Singh (Supra) is apposite to the facts of the present case inasmuch as even in the present case, the repairs to the building have concluded prior to the issuance of the notice under Section 354A of the Act. The relevant paragraph of the aforesaid decision is reproduced below: -

> "5. A perusal of sub section (1) shows that if the unauthorized construction had been commenced or is being unlawfully carried upon any premises, the Commissioner or for that purpose the person authorized by him may require the person carrying out such unauthorized construction or executing the unauthorized work stop; such construction or work within time specified in the notice. Sub section (2) of section 354A provides the remedy to the Commissioner to remove such unauthorized construction if the erection of the building or execution of the work is not stopped by the person within the period specified in the notice given under sub section (1). The condition precedent for invocation of power under sub section (2) of section 354A is non-compliance of the notice by the noticee given under sub section (1) of section 354A. In the present case on the face of the notice itself it is clear that by the time notice under section 354A was issued and even to the notice construction was complete and was in occupation. If a 354A(1) was issued, the remedy to the Corporation is under section 351 of the BMC Act and not under section 354A. The trial court has also observed "here one fact is clear so far as such stop work notice is even though styled, no record is coming before the court that really the work was in progress and the stages of progress of the construction is recorded by the office of the defendants. If the Corporation had no material in its possession at the time of issuance of the notice under section 354A that the activity of construction was going on, obviously notice under section 354A could not have been issued. In this background the order of the trial court cannot be sustained since admittedly no notice under section 351 was given by the Corporation to the original plaintiff and since section 354A of the BMC Act was not attracted the removal of the so called unauthorized construction in implementation of, the notice under section 354A prima facie cannot be said to be justified."
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> (emphasis supplied)

6. Therefore, the Trial Court without forming a prima facie view on the documents has merely sought to dismiss the Notice of Motion and has not recorded any finding in respect of the same. The Trial Court while exercising jurisdiction under Order XXXIX Rule 1 and 2 of the CPC, was required to come to prima facie view and as per the settled principles of law regarding balance of convenience and irreparable loss also needed to be taken into consideration before exercising the aforesaid jurisdiction.

In my considered view, the Trial Court has failed to apply the aforesaid principles before passing the impugned order. I am further of the view that the Trial Court has also not verified whether the alleged unauthorized repair to the structure/building was actually being carried out on the date of issuance of notice dated 31st July 2025 under Section 354A of the Act. I am therefore of the considered view that the Trial Court has not passed the impugned order which is supported by material on record and the discretion exercised by the Trial Court is arbitrary, perverse and contrary to settled principles. In these circumstances, interference in the Trial Court's impugned order is warranted.

7. In the present case, the Trial Court by not rendering a finding or forming a prima facie view on the submissions made by the Appellant (Original Plaintiff) has erred in exercising its discretion in dismissing the Notice of Motion filed by the Appellant (Original Plaintiff). Further, the Trial Court has also not given a finding as to how the tenantable repairs require permission under Section 342 of the Act and has proceeded on the basis of the vague notice dated 31st July 2025 issued under Section 354A of the Act which does not specify any details of the unauthorized repairs carried out to the said building. In my view, therefore the refusal of injunction would cause irreparable injury and harm to the Appellant (Original Plaintiff) and if the injunction is granted, the Respondents (Original Defendant) would suffer no comparable prejudice. The balance of the convenience lies in favour of the Appellant (Original Plaintiff). In my view therefore, the impugned order cannot be sustained and accordingly the Appeal is allowed.

ORDER

i. The Appeal from Order is allowed in the following terms:

ii. The impugned order dated 15 July 2026 passed by the Trial Court in the Notice of Motion No. 3046 of 2026 in LC Suit No. 1247 of 2026 is hereby set aside.

iii. The Respondents (Original Defendant), its servant, agents and persons are hereby restrained from acting upon the notice dated 31st July 2025 under Section 354A of the Act pending herein and final disposal of the suit. It will be open to the Respondent (Original Defendant) to issue fresh notice to the concerned person/Appellant (Original Plaintiff) in respect of any other unauthorized structure other than that covered in the notice dated 31st July 2025 in accordance with law for the removal of unauthorized construction if any. The learned Trial Court shall dispose of the pending suit as expeditiously as possible.

iv. Appeal is disposed of in the aforesaid terms. In view of the disposal of the above Appeal, pending Interim Application, if any, also stands disposed of.

(AARTI SATHE, J.)