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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 995 OF 2026
WITH
INTERIM APPLICATION NO. 8045 OF 2026
IN
APPEAL FROM ORDER NO. 995 OF 2026

Sukhdev Bomaiya Kotian ...Appellant
Versus
Municipal Corporation Of Greater Mumbai
And Another ...Respondents

Mr. Yatin Malwankar a/w. Mr. Vinod D. Mahadik a/w. Mr. Vinay Taliwal, for Appellant.

Ms. Smita V. Tondwalkar i/b. Ms. Komal Punjabi, for Respondent.

CORAM: AARTI SATHE, J.

DATE: 13 OCTOBER 2026

P.C.

1. The present Appeal from Order has been preferred under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908,(CPC) challenging the order dated 6th October 2026 passed by the learned City Civil Court, Bombay (hereinafter referred to as the "Trial Court"), in Notice of Motion No. 5068 of 2026 in L.C. Suit No. 2192 of 2026, whereby the Trial Court dismissed the Appellants' Notice of Motion and declined to grant the interim injunction sought by the Appellants.

2. Heard the learned counsel appearing on behalf of the parties. The learned counsel appearing on behalf of the Appellant submits that the Trial Court, while

passing the impugned order, failed to take into consideration the relevant facts and circumstances of the case and the material placed on record.

3. Learned counsel appearing on behalf of the Appellant submits that the Appellant was in lawful and peaceful occupation of the suit structure bearing Room No. 1, situated behind Kiran Tailor, 7th Road, opposite R.N. Gandhi Hospital, Vidyavihar, East Mumbai – 400077, and that the said structure was protected under the applicable policies of the State of Maharashtra.

4. It is further submitted that the aforesaid suit structure bearing Room No. 1 is distinct and separate from the structure bearing Room No. 118, which was acquired by the Respondent-Corporation for the purpose of the proposed road-widening project extending from the eastern side of the Vidyavihar Flyover Bridge. Learned counsel submits that, since the aforesaid project is a public project, the Appellant had no objection to its implementation, including the road-widening work and construction of the flyover, in the larger public interest.

5. Learned counsel further submits that the Appellant's consent to the demolition of Room No. 118 in connection with the aforesaid project cannot be construed as consent to the demolition of Room No. 1, as the two are distinct and separate structures. It is submitted that the Appellant continues to be willing to hand over possession of Room No. 1, subject to the Respondent-Corporation providing alternate accommodation in accordance with the applicable policy.

6. It is further contended that, since Room No. 1 constitutes a separate structure and only partial demolition has been carried out, the Appellant is entitled

to seek alternate accommodation in respect of the said room. Accordingly, the learned Counsel submits that the Appellant's claim for alternate accommodation in respect of Room No. 1 requires independent consideration, notwithstanding the Appellant's consent to the demolition of Room No. 118.

7. Per contra, learned Counsel appearing on behalf of the Respondent-Corporation has opposed the reliefs sought in the present Appeal from Order and submitted that the contention advanced on behalf of the Appellant, namely, that Room No. 1 is a separate and distinct structure from Room No. 118, is incorrect and has been raised to canvass an untenable claim for alternate accommodation.

8. Learned counsel for the Respondent Corporation further submits that, prior to the demolition of Room No. 118, the officers of the Respondent Corporation had visited and inspected the premises in May 2026. It is submitted that, upon such inspection, it was found that Room No. 1 and Room No. 118 formed part of the same structure and were not separate and distinct structures. On this basis, learned counsel on behalf of Respondent-Corporation contends that there is no requirement for the Respondent-Corporation to provide alternate accommodation to the Appellant in respect of Room No. 1.

9. Learned counsel on behalf of Respondent-Corporation further submits that the road-widening project has been completed and that the flyover at Vidyavihar is scheduled to be inaugurated tomorrow.

10. Learned counsel appearing on behalf of the Respondent Corporation has also tendered an extract of Final Annexure II, which, according to her, evidences that

there is only one structure at the suit premises and that Room No. 1 and Room No. 118 do not constitute two separate and distinct structures.

11. In order to ascertain whether Room No. 1 and Room No. 118 constituted separate structures, this Court kept the matter in the afternoon session to enable learned counsel appearing on behalf of the Appellant to produce photographs of the suit premises in support of the Appellant's contention that the two rooms were separate and distinct structures. Accordingly, learned counsel for the Appellant produced the photographs, which are taken on record and marked as Exhibit 'X' for identification.

12. Upon perusal of the aforesaid photographs, this Court is of the view that the contention advanced on behalf of the Respondent Corporation is borne out by the material placed on record. The photographs indicate that Room No. 1 and Room No. 118 do not constitute two separate and distinct structures, but form part of the same suit structure.

13. In view of the aforesaid, this Court is of the view that the order dated 6th October 2026 passed by the Trial Court is a well-reasoned order, passed after duly considering the evidence on record, particularly the inspection and measurements of the suit structure carried out by the officers of the Respondent-Corporation in May 2026.

14. This Court finds no reason to interfere with the impugned order, as the conclusion arrived at by the Trial Court constitutes a plausible view based on the material available on record. The Trial Court has also rightly taken into consideration the Appellant's own submission that Room No. 118 had already been

affected by the road-widening project and that approximately 80% of the structure had already been demolished.

15. I am further of the view that applying the principles of Wander Ltd. v. Antox India (P) Ltd. 2 , while considering an application under Order XXXIX Rules 1 and 2 of the CPC, the Appellate Court would not ordinarily interfere with the exercise of discretion by the court of first instance or substitute its own discretion, except where such discretion has been exercised or has been shown to have been exercised arbitrarily, or capriciously, or perversely, or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, and the facts of the present case do not warrant any interference with the impugned order of the Trial Court as the impugned order is a well-reasoned and well-considered order.

16. Considering the aforesaid facts and the settled position of law, I am of the view that the impugned order has been passed after duly appreciating the facts and the applicable law. The view taken by the Trial Court is a plausible view and does not warrant interference by this Court in its appellate jurisdiction.

17. In view thereof, the Appeal from Order fails and is accordingly dismissed. The Trial Court is directed to dispose of L.C.Suit No.2192 of 2026 expeditiously within a period of one month. There shall be no order as to costs.

18. In view of the dismissal of the Appeal from Order, pending Interim Application(s), if any, do not survive and are accordingly disposed of.

19. The Trial Court to take into consideration this order and dispose of the L.C.Suit No.2192 of 2026 accordingly within a period of one month.

(AARTI SATHE, J.)