

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.279 OF 2026

Fernhill Garden CHS Limited

Appellant/
.. Original Plaintiff

Versus

Municipal Corporation of Greater Mumbai

Respondent/
.. Original Defendant

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- Dr. Jyoti Panickar, Advocate for Appellant / Original Plaintiff.
 - Mr. Sachin Vajale, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 24, 2026

P.C.:

- 1.** Not on Board. Mentioned by way of filing praecipe dated 24.03.2026. Perused the praecipe.
- 2.** Heard Dr. Panickar, learned Advocate for Appellant / Original Plaintiff and Mr. Vajale, learned Advocate for Respondent.
- 3.** Appeal from Order is filed by Plaintiff – Society assailing the ad-interim order dated 22.12.2025 which is appended at Exhibit-A, page No.21 of the Appeal from Order. It is ad-interim order. In order to remove bottleneck and construct 9.5 meter road project which is under progress and widen the said road, the building projection line of the Plaintiff – Society comes in the way as an obstruction. Reason mentioned in the ad-interim order is that when the Society building was constructed and the width of road in front of suit plot was

determined, at that time Defendant – Corporation had granted TDR during that development and Plaintiff – Society had stated that it will hand over the setback at the time of redevelopment. The impugned action has been invoked however not in view of redevelopment of Plaintiff – Society’s building but in view of the road widening project undertaken by the Municipal Corporation. What has been stated above has been noted on the basis of submissions made across the bar while passing the ad-interim order after hearing the parties. Court has however directed the Corporation to file appropriate Reply to the Notice of Motion.

4. Dr. Panickar informs the Court that the Affidavit-in-Reply has been filed by Corporation as directed in the order dated 22.12.2025. Immediate apprehension is expressed by Dr. Panickar on basis of fresh notice dated 16.03.2026 issued by Corporation copy of which is appended to the praecipe. This notice is issued under Section 299 of the Mumbai Municipal Corporation Act, 1888, *inter alia*, stating that in view of refusal of ad-interim relief by virtue of the impugned order, the Corporation will take coercive steps in taking over the land belonging to the Society which comprises of land in front of the Society building alongwith its compound wall constructed by the Plaintiff – Society for its safety. The notice dated 16.03.2026 is placed before me perusal of which *prima facie* shows that merely based upon the ad-interim order, Corporation has issued the fresh notice and desires to

take coercive action within 72 hours thereof.

5. Dr. Panickar persuades the Court to consider the fact that if the fresh notice dated 16.03.2026 is implemented, the entire cause of action in the Suit proceedings will become infructuous. She would also submit that the Notice of Motion is pending hearing and next date for hearing the Notice of Motion is fixed on 25.04.2026. I agree with the submissions made by Dr. Panickar.

6. Mr. Vanjale, learned Advocate enters appearance on behalf of Corporation. He would inform the Court that fresh notice has been issued in view of reasons stated therein, *inter alia*, due to flood line and connectivity of storm water drain to be connected and availability of less torque on the turn and curvature and therefore the road requires to be extended.

7. Learned Trial Court is therefore directed to ensure that the Notice of Motion is heard on 25.04.2026. Copy of this order shall be placed before learned Trial Court day after tomorrow i.e. on 26.04.2026 at 11:00 a.m. for its perusal and convenience so that learned Trial Court shall note the fact that this Notice of Motion will have to be heard and decided on the next adjourned date finally and the Court shall accordingly adjust its board. The *lis* between the parties shall be decided strictly in accordance with law.

8. Liberty to the Corporation to apply, if they require any pre-

ponement of pending Notice of Motion before the Trial Court but only with due notice to the Plaintiff – Society. Needless to state that the ad-interim order shall be subject to the trial order passed in the Notice of Motion.

9. In the meanwhile, no coercive steps shall be taken in furtherance of the fresh notice dated 16.03.2026 issued by the Corporation against the Society's land and its compound wall.

10. Without expressing any opinion on merits of the matter, Appeal from Order is disposed. In view of disposal of Appeal from Order, pending Interim Application is also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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