



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 147 OF 2026**

|                                              |   |                            |
|----------------------------------------------|---|----------------------------|
| Swaroop Aditya Developers                    | ] |                            |
| through its partner Mr. Roshanlal C. Agarwal | ] |                            |
| Having its registered office at 7/A, Raj     | ] |                            |
| Niketan Niketan Building, Ground Floor,      | ] |                            |
| Near Patkar College,                         | ] |                            |
| S. V. Road, Goregaon West, Mumbai 400 086.   | ] | <b><u>...Appellant</u></b> |

**Versus**

|                                         |   |                              |
|-----------------------------------------|---|------------------------------|
| 1. Municipal Corporation of Mumbai      | ] |                              |
| A statutory body incorporated under the | ] |                              |
| Mumbai Municipal Corporation Act, 1888  | ] |                              |
| K/East ward, Azad Road, Gundavali,      | ] |                              |
| Andheri (East), Mumbai 400069.          | ] |                              |
| 2. Executive Engineer (B&F)             | ] |                              |
| D O Building and Fact                   | ] |                              |
| K/East Ward, Azad Road, Gundavali       | ] |                              |
| Andheri (East), Mumbai 400069.          | ] | <b><u>...Respondents</u></b> |

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*Mr. Aseem Naphade, Ms. Deepanjali Mishra i/b Mr. Ajit Rajgole for Appellant.*

*Mr. Pradeep M. Patil for Respondent No. 1-BMC.*

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**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : FEBRUARY 12, 2026**

**Oral Judgment :**

1. Heard Mr. Naphade, learned counsel appearing for Appellant and Mr. Patil, learned counsel appearing for Respondent-Corporation.

2. The First Appeal is at the instance of the original Plaintiff being aggrieved by order dated 31<sup>st</sup> January, 2026 passed by the City Civil Court at Mumbai, Borivali division, Dindoshi, Goregaon, Mumbai in L.C. Suit No. 144 of 2026 rejecting the plaint for want of jurisdiction.

3. Briefly stated, the facts of the case are that L.C. Suit No. 144 of 2026 was filed seeking declaration that stop-work notice issued under Section 354A and speaking order dated 19<sup>th</sup> January, 2026 passed by the Respondent-Corporation is illegal, bad in law and for an order of permanent injunction restraining the Defendant from demolishing or removing the suit premises. The Trial Court directed the Plaintiff to satisfy the point of maintainability of the suit in view of the bar provided under Section 515(A) of the Mumbai Municipal Corporation Act, 1888 [for short, "**MMC Act**"]. The Trial Court perused the averments in the Plaint as well as the arguments and held that except allegation of illegality of impugned notice and order, the Plaint does not disclose that the Plaintiff has sought substantive relief in the present suit beyond the restriction imposed by Section 515(A) of MMC Act and by relying upon the decision of ***Snehdeep Krida Mandal vs. Maharashtra Housing and Area Development Authority and Others***<sup>1</sup> dismissed the suit.

4. Mr. Naphade, learned counsel appearing for Appellant would

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1 2025 SCC OnLine Bom 1495.

submit that in the case of ***Municipal Corporation of Greater Mumbai vs. Rajendra Phulchand Gupta***<sup>2</sup>, this Court had culled out limited grounds under which notice issued under Section 351 and 354A can be questioned in the suit i.e. when the act of issuance of notice is nullity, where there is non-conformity with the fundamental judicial process, issuance of notice by misusing power and offending act has not been done in good faith. He submits that the plaint proceeds on the basis that the issuance of notice is nullity and that offending act has not been done in good faith. He submits that Hon'ble Division Bench in the case of ***Snehdeep Krida Mandal vs. Maharashtra Housing and Area Development Authority*** (supra) does not dilute the said position as regards the eventualities in which the notice could be questioned by way of suit. He would submit that the notice under Section 354A describes the schedule work as an unauthorized ongoing construction by using siporex block wall without taking prior permission from competent authority. He submits that there is no prohibition demonstrated from the MMC Act on the use of siporex block wall for the purpose of carrying out construction. He would further submit that Section 354A notice itself could not have been issued as the same can be issued to the ongoing construction and in the present case, the Plaintiff has constructed ground plus 13 floors and applied for part

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2 2022 SCC OnLine Bom 398.

Occupation Certificate on 13<sup>th</sup> May, 2025. He submits that the last commencement certificate was granted for 13<sup>th</sup> floor on 20<sup>th</sup> March, 2024. He would submit that in response to Section 354A notice, the reply was given by the Petitioner on 26<sup>th</sup> December, 2025 producing the commencement certificate as well as the Fire NOC/plans and as also the copy of application for issuance of occupancy certificate. He submits that it was specifically stated that there was no illegal unauthorized construction and therefore, the captioned notice is not applicable. He would further point out that vide speaking order by 19<sup>th</sup> January, 2026, the Respondent-Corporation has directed the removal of notice structure on the ground that no documents have been produced to prove the authorization of the structure or the existence of the structure prior to the datum line. He submits that the order is at variance with Section 354A notice which speaks of unauthorized construction by using spiorex block wall and speaking order does not given any findings as regards the subject matter of the notice.

**5.** He submits that upon reading of the Complaint, it is evident that the Plaintiff has challenged the order on the ground that it is a nullity and *ultra vires* to the provisions of MMC Act and that Section 354A notice as well as the speaking order suffers from non-application of mind. He submits that by impugned order, the Trial Court without considering the notice, the reply as well as the speaking order has dismissed the

suit for want of jurisdiction. He would submit that it is specifically pleaded in the Plaint that the orders are being issued under the influence of local corporator which is pleading in respect of act being not done in good faith.

6. *Per contra*, Mr. Patil, learned counsel appearing for Corporation would support the impugned order. He submits that by speaking order dated 19<sup>th</sup> January, 2026, the Corporation has specifically held that the Appellant has failed to produce any authentic documents approved by the competent authority. He submits that the sanctioned plan, if any, is in respect of authorized construction and the speaking orders speaks of unauthorized construction. He submits that the pleadings in the Plaint do not meet the settled eventualities as regards the jurisdiction of the Court while questioning the notice issued under Section 354A or orders passed thereon. He submits that there is no dispute about the proposition of law laid down in the decision of ***Municipal Corporation of Greater Mumbai vs. Rajendra Phulchand Gupta*** (supra), however, its applicability to present case is questionable.

7. The point which arise for determination is whether L.C. Suit No. 144 of 2026 questioning the notice under Section 354A and speaking order dated 19<sup>th</sup> January, 2026 sets out the case of issuance of notice being nullity and the offending act not being done in good faith conferring jurisdiction upon the City Civil Court.

8. Upon a holistic reading of the Plaint, it is clear that the Plaintiff has come with the case that the plans for construction on the building which was ground plus 13 floors were duly sanctioned and that commencement certificate has been granted. It is pleaded that the Plaintiff has applied for grant of occupancy certificate as the construction of building was completed by the Plaintiff. Therefore, there is pleading in the Plaint to justify that issuance of notice under Section 354A, which can be issued only to an ongoing construction, could not have been issued in respect of the Plaintiff's construction which had already applied for grant of occupancy certificate. Perusal of Paragraph Nos. 16, 17 and 18 of the Plaint would indicate that the Plaintiff has questioned the speaking order dated 19<sup>th</sup> January, 2026 as being illegal, bad in law and *ultra vires* the provisions of MMC Act. The foundation for terming the said orders as illegal and bad in law can be found in the initial pleadings of the Plaint which speaks of necessary permission and sanctions having been obtained and that the speaking order which has been passed on Section 354A notice itself is to be nullity in view of sanctions and permissions. Though Mr. Patil would support the impugned order on the ground that the speaking order of 19<sup>th</sup> January, 2026 speaks of failure to produce the authentic documents, it needs to be noted that the speaking order has been passed on the notice issued under Section 354A which describes the

scheduled work as an unauthorized construction by using siporex block wall without taking prior permission. The speaking order at first glance does not give any finding as to why the scheduled work is an unauthorized work particularly, when there is no prohibition under the MMC Act against use of siporex block wall. Further, the speaking order does not deal with the reply which was filed by the Plaintiff producing the permission and sanctions as well as the application for occupancy certificate. The pleadings in the Plaint are sufficient for the purpose of making out a case of the act of issuance of notice and the order passed therein being a nullity.

**9.** Perusal of the impugned order would indicate that the Trial Court has dismissed the suit by cryptic one paragraph order. There is no discussion as regards the pleadings in the Plaint, notice issued under Section 354A or the speaking order of 19<sup>th</sup> January, 2026 based on the notice issued under Section 354A. It is expected that when the suit is terminated at the threshold, there has to be detailed examination of the pleadings in the Plaint to arrive at finding that the pleadings do not align with well-settled requirements, which are required to be satisfied. It is not sufficient to merely rely upon the decisions without discussing its applicability to the case in hand.

**10.** In light of above, the First Appeal succeeds. The impugned order dated 31<sup>st</sup> January, 2026 is hereby quashed and set aside. L.C. Suit No.

144 of 2026 is restored to file.

**11.** Needless to clarify that this Court has considered the pleadings as well as the impugned order and notice only for the purpose of considering whether the pleadings set out case to confer jurisdiction on the City Civil Court and will not influence trial of the proceedings which is required to be decided on its own merits and in accordance with law.

**12.** In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

**13.** Considering that the suit is restored to file of the City Civil Court, it is expected that the Corporation will not carry out any further demolition till an appropriate application for interim relief is moved before the City Civil Court and order is passed thereon.

**[SHARMILA U. DESHMUKH, J.]**