

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 225 OF 2026
WITH
INTERIM APPLICATION NO.1380 OF 2026
IN
APPEAL FROM ORDER NO. 225 OF 2026

Naresh Roopchand Kothari

.. Appellant

Versus

The Municipal Commissioner and Anr.

.. Respondents

.....

- Ms. Sanjuka Dey a/w. Ms. Rhea Rajesh and Mr. Yash Dinde, Advocates i/by Yende Legal Associates for Appellant.
- Mr. Sachin Vajale, Advocate for Respondents – BMC.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2026.

P.C.:

1. Heard Ms. Dey, learned Advocate for Appellant and Mr. Vajale, learned Advocate for Respondents – BMC.

2. Present Appeal From Order is filed for assailing the order dated 03.02.2026 passed by the learned Trial Court, copy of which is appended at page No.284 of the Appeal From Order which dismisses interim relief to Appellant – Plaintiff. Notice of Motion No.557 of 2026 in L.C. Suit No.202 of 2026 is dismissed.

3. Plaintiff is aggrieved that in furtherance of the impugned order passed by the Designated Officer dated 22.12.2025 directing demolition of the alleged unauthorized first floor structure pursuant to

the impugned Show Cause Notice dated 27.09.2025 and the impugned order, the Corporation may take coercive steps.

4. Briefly stated, Appellant – Plaintiff is running a Guest House in the suit premises as a lodging establishment under all lawful permissions and licenses as required under relevant commercial and business regulations issued by the Municipal Corporation of Greater Mumbai (for short '**MCGM**'). There is no ambiguity or doubt about existence and subsistence of Plaintiff's suit structure and establishment since prior to 1980 and the fact that Plaintiff has been carrying on legitimate business therein. Grievance arose when Plaintiff was served with Show Cause Notice on 27.09.2025 by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short '**MMC Act**') alleging unauthorized construction of first floor using brick masonry walls and AC sheets for roofing in the suit structure. The suit structure is nomenclatured as Shop No.13 in Netaji Market, Chembur, Mumbai – 400 074. The impugned Show Cause Notice alleged contravention of Sections 337, 342 and 347 of the MMC Act. Plaintiff responded and replied to the notice on 10.10.2025 and attended personal hearing on 14.11.2025 and filed additional reply thereto on 08.12.2025. Plaintiff has placed on record all documentary evidence, *inter alia*, relating to the suit structure, rather existence and subsistence of the suit structure as also the licenses issued by the Corporation before the Designated Officer. Plaintiff's case has been

rejected by virtue of the order dated 22.12.2025 passed by the Designated Officer leading to filing of the Suit proceedings before the learned Trial Court.

5. Ms. Dey, learned Advocate for Appellant – Plaintiff has taken me through the documentary evidence appended by Plaintiff to the present Appeal From Order to show existence and subsistence of the structure. She has drawn my attention to the speaking order dated 22.12.2025 whereby the Designated Officer has not found favour with the Plaintiff's case and would submit that the said order is passed in a mechanical manner without considering any of the documentary evidence referred to and relied upon by Plaintiff.

5.1. She would submit that Plaintiff is a *bonafide* occupant and lawful user of the suit premises having purchased the same from its erstwhile owner in the year 2019 and has been running a legitimate Guest House business. She would submit that construction of the suit structure has never been altered and has been standing in the same manner and fashion since inception. She would particularly draw my attention to the Sale Deed dated 05.12.2019 which *prima facie* when read shows that the existence of mezzanine floor which is considered by the Municipal Corporation is alleged to be the first floor and the impugned action has been invoked on that ground against Plaintiff.

5.2. She would submit that case of the Corporation is based on a completely false premise that the Plaintiff has failed to prove construction of the first floor and therefore it is required to be removed and demolished when *prima facie* that is not a case. On the issue of authenticity, existence, subsistence, she has been able to take me through the various documents to make out a very strong *prima facie* case. She would therefore submit that the impugned order suffers from infirmity in not considering the Plaintiff's case as is appearing from the documentary evidence placed on record and therefore deserves to be interfered with by this Court.

6. **PER CONTRA**, Mr. Vajale, learned Advocate appearing for the Municipal Corporation would support the impugned order and submit that to the naked eye it *prima facie* appears on the basis of the photographs considered by the learned Trial Court that the first floor is erected above the ground floor and it can not be deemed to be the mezzanine floor. He would submit that the learned Trial Court has considered the factual situation and the documentary evidence placed on record which *prima facie* refers to existence of mezzanine floor.

6.1. In that view of the matter, he would vehemently submit that Plaintiff has failed to prove cogent and documentary evidence of construction of the first floor in the suit structure and therefore the same is unauthorized construction and deserves to be removed and

demolished. He would therefore urge the Court to uphold the impugned order.

7. I have considered the documentary evidence referred to and relied upon in the Appeal From Order and heard the learned Advocates appearing for the respective parties. Submissions made by them have received due consideration of the Court.

8. At the outset, it is seen that the dichotomy which exist pertains to determination of the mezzanine floor or first floor as alleged by both the parties before me. According to Appellant – Plaintiff, the structure above the ground floor is mezzanine floor which has been in existence and subsistence since inception whereas according to the Municipal Corporation, it is the first floor which has been newly constructed by Plaintiff. Such rival contentions can only be decided on evidence.

9. The speaking order dated 22.12.2025 passed by the Designated Officer considers the entire documentary evidence produced by Plaintiff. However, in the remarks column all that it reproduces is an identical remark in respect of all 8 documents of documentary evidence considered. On the face record the order passed by the Designated Officer exhibits non-application of mind and what is seen by the Court is nothing but a copy paste exercise conducted by the Designated Officer by reproducing identical remark in respect of the

entire documentary evidence. The learned Trial Court has failed to notice this fact on the face of record in the order dated 22.12.2025 which appears to have been passed in a mechanical manner.

10. Be that as it may, the learned Trial Court has in the impugned order returned its findings in paragraph Nos.5 to 7 of the order. Perusal of the said findings *prima facie* show that the learned Trial Court has formed its opinion on the basis of the photographs which have been filed by the respective parties and opined that the area of the structure above the ground floor structure appears to be the first floor erected above the ground floor. The Corporation may be right when it has alleged in the Show Cause Notice that Plaintiff is guilty of increasing the height of the suit structure, that however would have to be proved either by Plaintiff in evidence or in rebuttal by the Corporation in trial.

11. Merely on the basis of the photographs, if the impugned order is passed and is sustained by the Court, the Corporation may take coercive steps which would ultimately lead to the Suit becoming infructuous. In so far as the documentary evidence is concerned, the Designated Officer and the learned Trial Court have both not found favour with the same. The learned Trial Court has proceeded on the basis of the fact that reference to the first floor was not mentioned in the Sale Deed which has been relied upon by Plaintiff. Perusal of the

said Sale Deed *prima facie* shows that reference to the mezzanine floor has been specifically mentioned in the Sale Deed. On the basis of this evidence, the learned Trial Court has opined that Plaintiff has failed to submit satisfactory and conclusive proof of existence of the suit structure namely first floor prior to the datum-line and therefore case of Plaintiff deserves to be rejected.

12. The Corporation has filed a detailed Reply in the Notice of Motion before the learned Trial Court dated 02.02.2026 of the Assistant Engineer wherein the Corporation has reiterated its case of the Plaintiff having constructed the first floor unauthorizedly. *Prima facie* on perusal of the documents it is not even the case of the Corporation that the mezzanine floor did not exist above the ground floor since the Corporation has contended that Plaintiff has constructed the first floor unauthorizedly.

13. Save and except the aforesaid issue in so far as any other issue is concerned, there is no dereliction whatsoever on the part of Plaintiff. Plaintiff's suit structure has been in existence and subsistence since long time which is *prima facie* evident on the basis of the documentary evidence placed before the Court. The pitch card which has been referred to by Plaintiff is the primary documents refers to the size of the structure, however the notice which is issued on 27.09.2025 refers to the height of the structure as alleged by the Corporation.

Neither it is the Corporation's case that Plaintiff has demolished his old structure and constructed a new structure. Admittedly, on the basis of the above *prima facie* evidence Plaintiff has established that the suit structure was duly censused in 1976 and 2000. It is seen that the solitary reason on which the impugned order is passed is that Plaintiff has constructed an altogether new structure on the first floor. That apart, the reasons given in the order passed by the Designated Officer in respect of the entire documentary evidence produced by Plaintiff is that Plaintiff has failed to prove the existence and subsistence of the notice structure as on the datum-line.

14. In this regard once it is shown that the subject premises are censused structure and it is not disputed that the structure would be protected under the policy of the Corporation, then there is no question of applicability of datum-line. In that view of the matter, on *prima facie* consideration of the documents placed on record by Plaintiff without giving any imprimatur or decision of the legality and validity of the correctness of Plaintiff's case on the first floor / mezzanine floor above the ground floor, I am of the opinion that the impugned order suffers from various infirmities.

15. The *lis* between Plaintiff and the Corporation deserves to be taken to its logical conclusion on the Plaintiff leading appropriate evidence on record and the Corporation leading evidence in rebuttal.

In that view of the matter, the impugned order stands quashed and set aside without any opinion on merits and legality being given since this Court is of the opinion that the *lis* between the parties should be decided at trial on evidence.

16. The observations made in the above order are *prima facie* on the basis of the documentary evidence which are placed in the Appeal From Order and they are not an expression of interest of this Court to give any legitimacy to any act of Plaintiff in respect of the structure above the ground floor. It shall be the prerogative of Plaintiff to prove the same in accordance with law and the duty of the Corporation to oppose the same in rebuttal on evidence.

17. Keeping all contentions of both the parties expressly open, the impugned order is set aside.

18. The learned Trial Court is requested by this Court to dispose of the Suit proceedings strictly in accordance with law. Liberty to apply to the Trial Court.

19. With the above directions, Appeal From Order is disposed.

20. In view of disposal of Appeal From Order, pending Interim Application No.1380 of 2026 is accordingly disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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UGALMUGALE
Date: 2026.04.03
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