

rsk

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2347 OF 2026
IN
FIRST APPEAL NO.147 OF 2012

B.Joseph Baliah Nadar Thr Lrs

1.1 Joseph Baliah Nadar And 1.2

...Applicant-Appellant

Vs

Municipal Corporation Of

Greater Mumbai

...Respondent

Mr. Pradeep J. Thorat for the Applicant-Appellant.

Mr. Pradeep M. Patil for the Respondent.

CORAM : JITENDRA JAIN, J.

DATED : 2nd APRIL 2026

P. C.:

1. This application is filed pursuant to the liberty given to the appellant by the Hon'ble Supreme Court on 17 March 2026 for modification of the order dated 28 January 2026 which was challenged before the Hon'ble Supreme Court.

2. The modification is sought of paragraph 3 whereby Rs.7,500/- per month is directed to be deposited from December 2011 till the date of the order. With respect to future deposit no grievance is raised.

3. The arrears of deposit as per the above order from December 2011 to January 2026 works out to Rs.12,75,000/- as per the applicant.

4. Learned counsel for the applicant states that in paragraph 9 and

10 reasons are given to show that the applicants are not in a financial position to pay compensation as ordered with respect to the arrears.

5. I have heard learned counsel for the applicant and the respondent -Corporation.

6. As recorded in the order dated 28 January 2026, the City Civil Court has upheld notice issued under Section 314 of the MMC Act. The notice was issued on 1 October 1997. The effect of the order of the City Civil Court is that from 1997 the applicant is occupying the structure illegally. Though the illegal occupation would be from the date of notice i.e. 1997, this Court has ordered the applicant to deposit Rs.7,500/- only from December 2011 only. This is the factor which the Court has considered leniently though the correct order would have been to direct the deposit from 1997. The applicant has already got the benefit of almost 15 years. However, still not being satisfied, it is as prayed that the arrears directed from 2011, he is not in a position to pay.

7. It is important to note that the disputed structure is being used for commercial purpose in South Mumbai which is one of the costliest area of the city of Mumbai. A person carrying on commercial activities cannot be permitted to occupy the structure which has been found by the City Civil Court as illegal. Admittedly, the applicant has continued to use the suit structure since 1997 and even before that as contended before City Civil Court till today which has been found to be illegal. If

the order of deposit is not made then it would act as an incentive for litigant to continue with illegality without paying for it and looking at the time taken by the Court to dispose of the appeal, the litigant would be at a premium. This Court has to balance the equity. If the prayer of the applicant is accepted then it would be even a premium to a person who had committed illegality and the balance of convenience would be against the Corporation and not in favour of the applicant.

8. It is important to note that except making bald averment that they are not in position to pay the arrears, there is nothing enclosed to show the financial position of the applicant. No data, figures of business etc are given. No details of the earnings are given.

9. In my view, merely making bald averments without any supporting cannot be accepted. I have already in my order dated 28 January 2026 has specified that the deposit of Rs.7,500/- per month is very low compared to the market rate going in South Mumbai.

10. Since no case is made out for modification of the order dated 28 January 2026, the application stands dismissed.

[JITENDRA JAIN, J.]