

**IN THE CITY CIVIL COURT AT DINDOSHI
BORIVALI DIVISION, MUMBAI**

**DRAFT NOTICE OF MOTION NO. _____ OF 2015
IN
L.C.SUIT NO.3025 OF 2015**

Kamlesh Bhanwarlal Vaghrecha & Ors.Plaintiffs

V/s.

Municipal Corporation of Gr. Mumbai & Ors.Defendants

Adv. Mr. Ghag with Adv. Mr. Bhalekar for plaintiffs.
Adv. Mr. Shingade for defendant/M.C.G.M.

**CORAM : SHRI V. D. NIMBALKAR
Civil Judge,
Court Room No.7**

Dated : 4th November, 2015

AD-INTERIM ORDER

Perused plaint, documents filed alongwith plaint, Notice of Motion and affidavit filed in support of Notice of Motion. Heard Ld. advocate for the parties.

2. By impugned notice dated 10.07.2015, issued u/sec.351 of MMC Act, the defendant/MCGM alleged that there is unauthorized extension to existing structures of shop No.2/3 of the plaintiff.

3. The designated officer passed order on 17.10.2015

against the plaintiff directing to demolish above said extension within seven days.

4. Ld. advocate for the plaintiff argued that when defendant/MCGM is alleging that rear portion of the shop is unauthorized then the defendant/MCGM should prima faice show the basis for protecting the shop and contending its rear side to be unauthorized.

5. Ld. advocate for defendant/MCGM argued that similar notice was issued in the year 2008, and without instruction he is unable to state whether any action on said notice dated 29.08.2008 was initiated or not.

6. Ld. advocate for the plaintiff has relied on the Judgment in A.O. No. 712 of 1996, in support of his argument that the plaintiff being tenant, the necessary documents to show authorization of structure is with the landlord and therefore, the notice structure need to be protected. Said Ld. advocate also relied on the case law of **Rafiq Hameed Sayyed V/s Municipal Corporation of Gr. Mumbai reported in 2006(2) ALL MR 698**. It is held in said case that structure ought to have protected in absence of affidavit on behalf of defendant/MCGM.

7. The plaintiff is contending that he is tenant in the shop since the year 1987. From above said facts, it is not clear as to on what basis the defendant/MCGM held that notice structure

which is to the rear side of the plaintiff's shop is unauthorized. Normally the plaintiff needs to prove that his structure is authorized . But in the facts of present case, when it is contended that there is unauthorized extension then prima facie reply on affidavit of the officer of defendant/MCGM is necessary to decide on what basis the defendant/MCGM contended said construction to be unauthorized extension in view of above said case law.

8. For above said reason and in view of above said case laws it is held that plaintiff has proved prima facie case to grant ad-interim relief till the defendant/MCGM files reply to the N/m.

9. Therefore, following order is passed.

ORDER

1. The Defendants are restrained from taking any action of demolition on the basis of impugned notice dated 10.07.2015 and order dated 17.10.2015 till filling of reply by defendants.
2. Accordingly, ad interim relief is granted.

Dt.04.11.2015

(V. D. Nimbalkar)
Civil Judge,
City Civil Court,
Borivali Div., Dindoshi, Mumbai

Directly typed on computer-04.11.2015

" I affirm that the contents of this PDF file judgment are the same, word to word, as per the original judgment."

Name of Steno with Post :- Mrs. Trupti S. Bhogte
(H.G. Stenographer)

Name of the Judge (with Court No.):**- H. H. J. Shri V. D. Nimbalkar,**
C. R. No.7, Dindoshi Court

Date of pronouncement of judgment/order:- 04.11.2015

Judgment/order signed by the PO. on :- 04.11.2015

Judgment/order uploaded on :- 07.11.2015