

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

**DRAFT NOTICE OF MOTION  
IN  
L.C. SUIT NO. 1989 OF 2015**

Mr. Sajjad Jamdad Khan

**..Plaintiff**

**V/s**

The Municipal Corporation of Greater Mumbai

**...Defendants**

Adv.Mr. A.A.Shaikh for plaintiff

Adv. Mr. Pushpa Yadav for defendants

**CORAM: H.H.THE CITY CIVIL COURT JUDGE  
P. F. SAYYAD (C. R.NO.11)  
DATE: 20<sup>th</sup> July, 2015.**

**: ORDER :**

1. Plaintiff has taken out this Notice of Motion for ad-interim injunction to restrain the Defendants/Corporation from demolishing the suit premises or any of the part thereof till final disposal of the suit. Plaintiff has also prayed for ad-interim relief in terms of prayer clause (b). It is the case of the plaintiff that he is in occupation of the suit premises. Which is tenanted premises. He is carrying on his business in the suit premises. Plaintiff suddenly received notice Under Sec. 351 of the MMC Act, 1888 issued by Defendant/Corporation, directing the plaintiff to remove the unauthorized structure or it will be demolished by the Defendants/Corporation. Plaintiff relied the said notice. However, without giving any personal hearing, defendants /Corporation passed order dated 10/07/2015 directing the plaintiff to demolish the alleged unauthorized

structure.

2. According to the plaintiff, he has not carried out any unauthorized construction. He is doing the business in the suit premises since 1989. Plaintiff has produced Shops and Establishment Certificate and Electricity bill in support of contention regarding possession of the suit premises. Ld. Advocate for the Defendants/Corporation raised strong objection that, plaintiff has carried out unauthorized construction and Corporation has passed reasoned order after considering reply and documents submitted by the plaintiff. According to the Defendants/Corporation, plaintiff has failed to produce any document to show the existence of the suit premises prior to 01/04/1962. On perusal of the plaint, it can be seen that plaintiff is carrying on his business and to his knowledge, suit premises is being assessed much prior to 1960 and the assessment copies are with the landlord.

3. It is also pleaded that plaintiff has applied for assessment proof and shall produce the same in due course.

4. Ld. Advocate for the Defendants/Corporation has relied upon the case of **Namdev Pandurang Panchal/ Municipal Corporation of Greater Bombay and another, reported 2006(1) Mh.L.J. page 194**. It has been held that “ No doubt demolition is a drastic action, but looking to the tendency of the citizens of making illegal construction in the City of Mumbai, which are hundreds and thousands in numbers, BMC is required to be empowered with such drastic action and whether there is a rational behind fixing the datum line, the court cannot go into this question

because this is a question of policy.”

5. The above referred case was decided on merits after considering the evidence on record and cross examination of the parties. Whereas, in the present case ad-interim relief is to be decided. This is not to stage to decide dispute on merit. Therefore, in my opinion with due respect the referred case law is not helpful to the Defendants/Corporation at this interim stage.

6. According to the plaintiff suit premises is tenanted premises as such it cannot be expected from the plaintiff to possess the necessary documents to show the existence of the suit premises, prior to 1960. Under such circumstances, opportunity is required to be given to the plaintiff to produce any such documents, if existing. Therefore, I find that this is fit case to grant ad-interim relief as prayed for till next date. Hence, I pass following order.

**ORDER**

1. Ad-interim relief granted in terms of prayer clause (b) till next date on 07/08/2015.
2. Leave to register the Draft Notice of Motion.

**Date: 20.07.2015**

**(P. F. SAYYAD)**  
**Judge,**  
**City Civil Court,**  
**Dindoshi, Mumbai.**

**Dictated on:20.07.2015**

**Transcribed on: 22.07.2015**

**Signed on: 23.07.2015**

**Sent to Dept. on :**

...

**“ 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 :-Sushama S.Chudji, H.G. Stenographer**

**Name of the Judge:- HHJ Smt P.F.Sayyad (C.R.No.11)**

**Date of pronouncement of judgment:-20/07/15**

**Judgment signed by the PO. On:-23/07/15**

**Judgment uploaded on:-23/07/15.**