



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

DRAFT NOTICE OF MOTION
IN
L.C. SUIT NO.1313 of 2022
(CNR No.MHCC04-005072-2022)

Mr. Salvi Ravindra Shivram

..Plaintiff

Vs.

The Municipal Corporation of Greater
Mumbai.

..Defendant

Adv. Mr. Charulia for the plaintiff.

Adv. Mr. Shweta Patankar for the defendant.

Coram: Her Honour Judge,
Smt. V.D. Ingle
(C.R.No.8)

Date : 21st July, 2022.

ORAL ORDER

The plaintiff has taken out the present draft Notice of Motion for restraining the defendant from acting upon notice dated 07.06.2022 issued under Section 351 of the MMC Act and for direction to the defendant to consider the reply.

2. Heard both the sides.

3. It is seen that the defendant has issued notice dated 07.06.2022 under Section 351 of the MMC Act, which was replied by the plaintiff vide reply dated 09.06.2022. The copy of the said reply shows the stamp and acknowledgement of the defendant regarding the receipt of the same on 09.06.2022. The receipt of the reply is not disputed by the defendant. The learned advocate for the plaintiff submits that the plaintiff has submitted his reply on 09.06.2022, which can be considered by the defendant and a Speaking Order can be passed. The learned advocate for the defendant gave say and submitted that the defendant are ready to consider the reply filed by the plaintiff and pass Speaking Order in accordance with the provisions of law.

4. It is seen that the plaintiff has replied the impugned notice. It is further seen that till this date, the impugned notice has not been implemented. The defendant have given their say to consider the reply and pass Speaking Order. In such circumstances, if the defendant is directed to consider the reply submitted by the plaintiff and a Speaking Order is passed, the matter can be decided once for all and on merits. The receipt of the reply is not disputed by the learned advocate for the defendant. Thus, in the peculiar facts and circumstances of the case, it would be just and proper to direct the defendant to consider the reply dated 09.06.2022 and the documents submitted therewith and to pass a Speaking Order and meanwhile, till passing Speaking Order, the defendant shall not act upon the impugned notice and 15 days thereafter, if adverse order is passed against the plaintiff.

5. In view of the above directions, nothing survives in the draft Notice of Motion and no purpose will be served by keeping the draft Notice of Motion pending, as the defendant is directed to pass a Speaking Order, by considering reply and if adverse order is passed against the plaintiff, the defendant shall give 15 days notice prior to the demolition, as per the guidelines laid down in the case of Municipal Corporation of Greater Mumbai and Ors. Vs. M/s. Sunbeam High Tech Developers Private Ltd., reported in (2019) 20 SCC 781. It is made clear that the present order is not passed on merits. Hence, I pass the following order:-

ORDER

1. Draft Notice of Motion is disposed of with directions to the defendant to consider the reply dated 09.06.2022 and the documents submitted therewith and pass a Speaking Order, meanwhile, till passing a Speaking Order, the defendant shall not act upon the impugned notice and if adverse order is passed against the plaintiff, the defendant shall give 15 days notice prior to the demolition, as per the guidelines laid down in the case of Municipal Corporation of Greater Mumbai and Ors. Vs. M/s. Sunbeam High Tech Developers Private Ltd., reported in (2019) 20 SCC 781.
2. Draft Notice of Motion be registered for statistical purpose.

Date: 21.07.2022

(Smt. V.D. Ingle)
Judge,
City Civil & Sessions Court,
Borivali Division, Dindoshi
Goregaon, Mumbai

Dictation given directly on computer on : 21.07.2022
 Checked and signed by HHJ on : 21.07.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
 SIGNED JUDGMENT/ORDER.”

UPLOAD DATE AND TIME :28.07.2022 11.30 A.M. ATUL SURYAKANT BHOGTE
 NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. V.D. Ingle (Court Room No.8)
Date of Pronouncement of Judgment/Order	21.07.2022
Judgment/Order signed by P.O. on	21.07.2022
Judgment/Order uploaded on	28.07.2022