

MHTH290017252026

Presented on : 23/06/2026
Registered on : 23/06/2026
Decided on : 03/08/2026
Duration : 00Y 01M 11D

IN THE COURT OF DISTRICT JUDGE-2, BHIWANDI,
AT BHIWANDI, DISTRICT THANE
(PRESIDED OVER BY N.K.KARANDE)

MISCELLANEOUS CIVIL APPEAL NO.75/2026
EXH. : 25

- 1] **Yogesh Shyam Bhoir,**
Age : 29 years,
Occupation : Business,
R/at : 1460/0, 1st floor, Sai Sadan Building,
Oswalwadi Road, Near Daya Park,
Kamatghar, Bhiwani, dist. Thane.
- 2] **Dipesh Shyam Bhoir,**
Age : 26 years,
Occupation : Business,
R/at : 1460/0, 1st floor, Sai Sadan Building,
Oswalwadi Road, Near Daya Park, ... **Appellants**
Kamatghar, Bhiwani, dist. Thane.

Versus

- 1] **Bhiwandi Nizampur City Municipal Corporation,**
Through its Commissioner, Head Office at
Bhiwandi, Dist. Thane.

- 2] **Assistant Commissioner / Designated Officer,**
Committee No. 3, Bhiwandi Nizampur City
Municipal Corporation, Bhiwandi, Dist.
Thane.
- 3] **Shyam Narayan Bhoir,**
Aged 57 years,
Occupation : Business
R/at : 764, Sai Prasann Society, Narpoli,
Agra Road, Near Police Station, At Narpoli,
Bhiwandi Vidyashram, Dist. Thane.
- 4] **Champadevi Subhashchandra Gupta,**
Aged 64 years,
R/at : 488, Old Agra Road, Near Ratan
Talkies, Vitthal Nagar, Narpoli, Bhiwandi,
Vidyashram, Thane.

...Respondents

Shri. P P Patil, the learned Advocate for appellants,
Smt. A. A. Momin, the learned Advocate for respondent no. 1,
Shri. V. D. Jadhav, the learned Advocate for respondent no.4.

**APPEAL UNDER ORDER XLIII RULE 1 OF THE CODE OF CIVIL
PROCEDURE**

J U D G M E N T
DELIVERED ON : 03rd AUGUST, 2026

1] This is a Miscellaneous Civil Appeal preferred against the impugned order passed in Regular Civil Suit No. 268/2026, below Exh. 9, dated 03/06/2026, by the 2nd Jt. Civil Judge Junior Division, Bhiwandi vide which the application Exh. 9 was rejected.

2] The appellants are the original plaintiffs while the respondents are the original defendants. For the sake of brevity, the parties in the present appeal are referred to by their nomenclature before the learned Trial Court.

3] Brief facts leading to the present Miscellaneous Civil Appeal can be summarized as follows:-

The plaintiffs filed Regular Civil Suit No. 268/2026 for declaration and for perpetual injunction in respect of Municipal Property No. 1463/01/G and 1463/101 situated in RCC ground + 3 upper floor building known as Sai Darshan constructed upon survey no. 49, hissa no. 38 situated at mauje Kamatghar, Tal. Bhiwandi, Dist. Thane is suit premises. (Hereinafter referred as 'suit premises').

The plaintiffs state that they acquired their respective premises under the registered sale deed executed by defendant no. 03 personal to the register development agreement dated 29/04/2009 and irrevocable power of attorney dated 25/01/2008 executed by defendant no. 04 and other in favor of defendant no. 03.

The said suit premises has been in existence openly, continuously and peacefully for more than 10 to 14 years. The municipal corporation imposed tax on municipal property no. 1463 and 1463/01/G and 1463/01.

Defendant no. 01 and 02 initiated proceedings alleging unauthorized construction and passed order dated 23/03/2026 under section 260 of the Maharashtra Municipal Corporation Act, 1949 and followed by the consequential demolition notice directing removal the suit premises. Therefore, the plaintiffs filed the suit and submitted temporary injunction application before the Trial Court and status-quo application at Exh. 09. Said application was rejected therefore present appeal is filed.

4] The respondent/defendant nos. 1 filed say at Exh. 20 and respondent no. 04 filed say at Exh. 21. The some and substance of defendant that, defendant no. 04 is a owner of suit premises and the plaintiffs are not concerned with the suit premises. According to the defendant the construction of the suit premises is illegal. Therefore, the action of municipal corporation is illegal one. Therefore, defendant prayed for rejection of the appeal.

5] From the following grounds appellants filed appeal :-

- (i) The learned Trial Court failed to appreciate that suit premises is in existence since last 12 to 14 years and same was assessed by the municipal corporation more than 12 to 14 years for tax purpose.
- (ii) The learned Trial Court failed to appreciate that municipal corporation were accepting municipal tax for several years

and that is within a knowledge of municipal corporation in respect of the structure.

- (iii) The learned Trial Court failed to appreciate that, the plaintiffs are purchaser and occupant of the suit premises.
- (iv) The learned Trial Court error in holding that no prima facie case existed merely because sanction plan and occupation certificate were not produced without considering larger issue of legality of the demolition of proceeding and compliance with natural justice.
- (v) The learned Trial Court failed to appreciate that, the show cause notice was not issued to the plaintiffs and no opportunity of hearing was given by the officer of municipal corporation.
- (vi) The learned Trial Court failed to appreciate that, defendant no. 01 and 02 have acted in gross violation of principle of natural justice against the plaintiffs.
- (vii) The learned Trial Court has wrongly appreciate as there is no document to support the plaintiffs case.

6] The plaintiffs advocate submits that, the plaintiffs constructed suit premises with the permission of municipal corporation. The plaintiffs submitted the sanction plan and the municipal corporation Bhiwandi had given the occupation certificate. The municipal corporation are taxing the suit premises

since last 10 to 12 years. The order of learned Trial Court is wrong and order is a perverse. The documents which produced before the Appellate Court were not available to the plaintiffs in the trial Court. Therefore, he submits that, the plaintiffs want to amend the plaint and submit document. Therefore, he prayed for allowing the appeal and remand the matter.

7] Per contra, the learned counsel for defendant strongly opposed the appeal. According to them, the fair opportunity were given to the both parties and thereafter order was passed. Therefore, they prayed for rejection of appeal.

8] From the rival contentions of both the parties, the following points emerges for determination and the findings thereon are as under:

SR.NO.	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1]	Whether the matter is required to be remanded back to the Trial Court ?	..Yes
2]	Whether the impugned order passed by the learned Trial Court calls for any interference ?	..Yes.
3]	What Order ?	As per final order.

R E A S O N S

AS TO POINT NOS. 1 AND 2 :-

9] Perused the order of the Trial Court dated 03/06/2026, the learned Trial Court has observed that, the plaintiffs are not

having any permission of construction and completion certificate regarding suit premises. Therefore, application was rejected.

10] The plaintiffs proves the documents at Exh. 22 regarding the permission dated 25/09/1996 and also panchanama and notice and also tax related document. The notice was issued by the Commissioner Municipal Corporation, Bhiwandi dated 05/03/2026 which indicate that the suit premises construction was illegal. According to plaintiffs they are owner of the suit premises and they have taken the permission of municipal corporation by submitting sanction plan and at the time of hearing of the Exh. 09 the above documents were not available to the plaintiffs. So, the plaintiffs want to produce the said document before the Trial Court and made amendment in the plaint. In the appeal it is not proper to take new document which was not before Trial Court and appreciate the order. Therefore, it is a necessary to give opportunity to both parties to put up their case and produced documents before Trial Court. So, it is a necessary to remand the matter. Hence, following order is passed.

ORDER

- 1) Miscellaneous Civil Appeal No.75/2026 is allowed.
- 2) The order on Exh. 9 is hereby set aside.
- 3) The matter is remanded back to the Trial Court and the Ld. Trial Court is directed to re-hear the status-quo application

Exh. 9 by giving opportunity to both parties and decide it as early as possible.

- 4) Both the parties shall bear their own costs.

Bhiwandi
Dt.03/08/2026

(N.K.Karande)
District Judge-2,
Bhiwandi.