

MHAU130000922025



R.C.S.No.66/2025

**Shaikh Shahrukh Shaikh Sharif Vs. Municipal Corporation,**  
**Aurangabad**

**ORDER BELOW EXH.5**

This is an application for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (“C.P.C.” for short) made by the plaintiff. Read the application and reply of defendant corporation. Heard Ld. Advocates for the rival parties.

02. Ld. Advocate for plaintiff argued that, the suit property is jointly owned and possessed by the plaintiff. The plaintiff is running mobile shop the suit property and has invested one crore rupees in said business. He is possessing shop license. He has regularly paid property tax to defendant Corporation in respect of the suit property. However, the defendant Corporation has issued a notice of demolition of construction over suit property on 11.11.2025 and it was pasted on the suit property at mid night without following due procedure of law. Therefore, present suit for declaration in respect of said notice and for perpetual injunction restraining defendant corporation from demolition of construction over suit property is instituted by plaintiff. In such circumstances, it is necessary to grant an order of temporary injunction restraining

defendant corporation from illegal demolition of suit property till the disposal of the suit. According to him, there is a *prima facie* case in favour of plaintiff for grant of temporary injunction.

03. Learned advocate for defendant corporation submitted that, the plaintiff has not produced construction permission, sanction map and completion certificate in respect of the shop standing over suit property. There is nothing on record to show that the construction over suit property is authorized. Therefore, there is no *prima facie* case in favour of plaintiff for grant of temporary injunction.

04. Hence, the following points arise for determination and I have recorded my findings to each of them for the reason as follows:-

Sr.No.	POINTS	FINDINGS
1.	Whether the plaintiff has made out a prima-facie case ?	No.
2.	In whose favour balance of convenience lies?	Defendant Corporation.
3.	Whether the plaintiff will suffer irreparable loss, if the temporary is not granted?	No.
4.	What order ?	As per final order.

### **REASONS**

#### **AS TO POINT NO.1 :-**

05. The claim of temporary injunction is governed by the provisions of Order XXXIX Rule 1 and 2 of C.P.C. Order XXXIX Rule 1 of C.P.C. opens with the words “where in any suit it is proved by affidavit or otherwise-”. It means that, for the purpose of deciding an application for

temporary injunction the court is required to consider the affidavits filed by the parties for this purpose or other material like documents produced by the parties. In the present case neither plaintiff nor defendant Corporation have filed affidavits for this purpose. However, it is not in dispute that, the defendant Corporation has issued notice dated 11.11.2025 to plaintiff believing that the construction over suit property is unauthorized and called upon him to remove said construction. Thus, it is apparent that, the suit property is in danger of wasted or damaged by defendant Corporation.

06. It is to be noted that, defendant Corporation has powers to remove or demolish unauthorized structure by following due procedure of law. Issuance of a notice dated 11.11.2025 by defendant Corporation to plaintiff is a part of its procedure in demolition of unauthorized construction. It is seen that, the plaintiff has not produced the documents i.e. construction permission, sanctioned map and completion certificate etc. in the office of defendant Corporation though he was called upon by it as per its notice dated 11.11.2025. Likewise, the plaintiff has not produced said documents before this Court. In spite of it, the plaintiff claims a notice dated 11.11.2025 issued by defendant Corporation to be illegal. If the case of plaintiff is considered in the light of this position, it does not appear that the plaintiff has raised a *bona-fide* question requiring investigation. When a *bona-fide* question requiring investigation is not raised, it is said that no *prima-facie* case is made out. Hence, I hold that plaintiff has not made out *prima-facie* case for grant of temporary injunction and answer point No. 1 in negative.

**AS TO POINT NO.2 :-**

07. There is no document on record to show that the construction on the suit property is authorized by a competent authority. Therefore, no inconvenience will cause to the plaintiff in the event of refusal to grant temporary injunction. On the other hand, the defendant Corporation has powers to demolish or pull down such structure by following due procedure of law. Thus, the comparative mischief, hardship or inconvenience which is likely to be caused to the defendant Corporation by granting temporary injunction will be greater than that which is likely to be caused to the plaintiff by refusing it. Hence, I answer point no.2 accordingly.

**AS TO POINT NO.3 :-**

08. The suit is for perpetual injunction in respect of immovable property. It follows that, the grant or refusal to grant temporary injunction will cause irreparable loss to the either party. It appears that the defendant Corporation is following due procedure of law. In such circumstances, grant of temporary injunction may cause interference in exercise of the statutory powers of the defendant Corporation without any valid reason. Moreover, if the plaintiff succeeds in the suit, he can be compensated in terms of money. Therefore, I hold that no irreparable loss will cause to plaintiff if the temporary injunction is refused. Hence, I answer point no.3 in the negative.

**AS TO POINT NO.4 :-**

09. The plaintiff has not shown that there is a *prima-facie* case in his favour. The balance of convenience also does not lie in his favour and he will not suffer irreparable loss if the temporary injunction is refused.

Hence, it is necessary to reject the application. Therefore, in answer to point no.4, I pass the following order.

**ORDER**

Application stands rejected.

Date :-04.04.2026.

**(Shri. N.H. Tikhe)**  
Civil Judge Senior Division  
(Corporation Court), Aurangabad.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : V.K.Chavan,  
Stenographer Grade-II,  
Court : C.J.S.D. (Corporation Court),  
Aurangabad  
Date : 04.04.2026  
Order signed by the  
presiding officer on : 04.04.2026  
Order uploaded on : 04.04.2026