

MHCC010032292026



IN THE BOMBAY CITY CIVIL COURT AT MUMBAI

NOTICE OF MOTION NO.1880 OF 2026
(CNR NO.MHCC01-003229-2026)

IN
SUIT NO.1510 OF 2018

Naresh Motilal Makwana

....Plaintiff.

V/s.

The Municipal Corporation of
Greater Mumbai & Anr.

...Defendants.

Appearance :

Advocate Prashant More for the plaintiff.
Advocate Bibhishan Sutar for defendants /BMC.

CORAM : HIS HONOUR JUDGE
SHRI. PRASHANT C. KALE
(COURT ROOM NO.06)

DATE : 22nd JULY, 2026.

ORDER

Read the affidavit in support, written notes of arguments of the plaintiff and affidavit in reply of defendants / BMC. Heard parties.

2. By this Notice of Motion, the plaintiff prayed for setting aside and quashing the impugned order dated 11.02.2026 passed by the Assistant Engineer, G/N Ward, rejecting permission for tenantable repairs and also, to grant permission to the plaintiff to carry out tenantable repairs to Shed No.2, behind Daginawala Mansion, Plot No.546, C.S. No.1/1223, 2/1223, TPS-III, Mahim (W), Mumbai- 400016. It is submitted by the plaintiff that, the suit challenges the notice dated 22.03.2018 issued U/s.351 of the Mumbai Municipal Corporation Act (MMC Act). This Court was pleased to grant interim protection on 17.05.2018 restraining coercive action. He made an application dated 29.07.2021 to MCGM seeking permission for tenantable repairs. Upon refusal to consider the same on the ground that the matter was sub-judice, he was constrained to file Notice of Motion No.1869 of 2021 on 13.08.2021. The said Notice of Motion was duly served upon MCGM on 27.09.2021 and same is recorded in the written notes of argument filed in the earlier NMS. Despite service, no reply was filed. On 28.01.2026, it was recorded in the roznama that defendants have not filed say and the matter was heard without reply. It is further contended by the plaintiff that, the present Notice of Motion is not barred by the principle of *res-judicata*. On 11.02.2026, the Assistant Engineer passed an order rejecting the permission for repairs solely on ground that the structure is unauthorized. In fact, on 17.05.2018 the notice issued U/s.351 of MMC Act is stayed. The present Notice of Motion is based on fresh cause of action and no prejudice will be caused to defendants, if tenantable repairs are permitted subject to inspection.

3. Defendants / Corporation has filed reply and opposed the Notice of Motion by submitting that the notice U/s.351 of MMC Act is issued in respect of unauthorized construction work and speaking order is passed by the designated officer. The plaintiff earlier filed the Notice of Motion No.1869 of 2021 seeking prayer therein as in present Notice of Motion. The concerned officer properly rejected the application of the plaintiff as per the rules and regulation of the concerned department. There is no any lacuna on the part of concerned officer while rejecting the application of the plaintiff which is purely administrative act of the concerned department. It is important to note that the plaintiff want to interfere in the administrative process of defendants/ Corporation by way of present Notice of Motion and this act can not be sustained in the eye of law. The letter dated 11.02.2026 is executive or administrative acts or orders and the same are not open to challenge in a Court of law. The plaintiff has deliberately suppressed material facts as well as withhold various documents from this Court, hence the plaintiff can not claim any equity from this Court. Under the circumstances, the Notice of Motion is not maintainable and the same is liable to be dismissed with costs.

4. By this Notice of Motion, what is prayed is setting aside and quashing of the impugned order dated 11.02.2026 passed by the Assistant Engineer, G/N Ward, rejecting permission for tenantable repairs and also, to grant permission to the plaintiff to carry out tenantable repairs to Shed No.2, behind Daginawala Mansion, Plot No.546, C.S. No.1/1223, 2/1223, TPS-III, Mahim (W), Mumbai-400016. Certainly, the order passed by the concerned authority is within

the purview of the provisions of the Mumbai Municipal Corporation Act. The provisions of Section 342 of the MMC Act is having explanation in respect of tenantable repairs. The provisions of Section 342 are reproduced hereunder :

" Section 342. Notice to be given to the Commissioner of intention to make additions, etc., to [or change of user of] a building.- *Every person who shall intend-*

(a) to make any addition to a building [or change of existing user].

[(b) to make any alteration or repairs to a building involving the removal, alteration or re-erection of any part of the building except tenantable repairs:

Provided that, no lowering of plinth, foundation or floor in a building shall be permitted.

Explanation.—“Tenantable repairs” in this section shall mean only,-

(i) providing guniting to the structural members or walls;

(ii) plastering, painting, pointing;

(iii) changing floor tiles;

(iv) repairing W.C., bath or washing places;

(v) repairing or replacing drainage pipes, taps, manholes and other fittings;

(vi) repairing or replacing sanitary water plumbing, or electrical fitting; and

(vii) replacement of roof with the same material but, shall not include,-

(a) change in horizontal and vertical existing dimensions of the structure;

(b) replacement or removal of any structural members of load bearing walls;

(c) lowering of plinth, foundations or floors;

(d) addition or extension of mezzanine floor or loft; and

(e) flattening of roof or repairing roof with

different material.]

*[(c) * * * *]*

[(cc) to make any alteration in a building involving-

(i) the sub-division of any room in such building so as to convert the same into two or more separate rooms,

(ii) the conversion of any passage or space in such building into a room or rooms, or]

(d) to remove or reconstruct any portion of a building abutting on a street which stands within the regular line or such street, shall give to the Commissioner, in a form obtained for this purpose under Section 344, notice of his said intention, specifying the position of the building in which such work is to be executed, [*] the nature and extent of the intended work, [the particular part or parts, if any, of such work which is or are intended to be used for human habitation] [and the name of the person whom he intends to employ to supervise its execution]."*

5. The provision itself clarifies that what is designated as tenantable repairs. Certainly, the objection of the BMC that earlier Notice of Motion of the plaintiff was decided seeking similar prayer is not justified because the earlier Notice of Motion was disposed of with directions to decide the pending application of the applicant / plaintiff for carrying out tenantable repairs. It is settled position that for carrying out tenantable repairs permission is not necessary. By virtue of the order passed by the concerned authority on 11.02.2026, the reason put-fourth by the authorities is as under :

"In this regards, this office had issued notice U/s.351 of MMC Act 1888 to the above mentioned structure. After scrutiny of documents

submitted by you, this office had passed speaking order on 04.05.2018 stating that you have failed to prove the authenticity of the structure or that the structure is tolerated structure. You were further ordered to remove the said unauthorized structure.

In view of the above speaking order, this office can not grant repair permission to the subject mentioned premises i.e. Shed No.2, Behind Chawl No.A, Daginawala Mansion, Opp. Mahim Railway Station, Mahim (W), Mumbai-400 016 as the same is neither authorized structure nor it falls within the datum line of tolerated structure i.e. 17.04.1964 for residential and 01.04.1962 for commercial structure."

6. Apparently, the prayer in the present Notice of Motion is to set aside the aforesaid order passed by the concerned officer annexed at Exhibit- 'A' to this Notice of Motion. The plaintiff has filed the suit and challenged the notice issued U/s.351 of the MMC Act and ad-interim relief in terms of prayer clause (a) was granted to the plaintiff. Under such circumstances, the plaintiff is coming with the simple request seeking permission for tenantable repairs.

7. The provision of Section 342 of the MMC Act is very clear that whatever comes within the ambit of tenantable repairs, for that no permission is required. In the aforesaid circumstances, the plaintiff is nowhere justified in making of application to defendants / Corporation seeking permission to carry out the tenantable repairs.

8. Certainly, the plaintiff is not coming before this Court disclosing all the facts. The order filed alongwith the present Notice of Motion at Exhibit- 'A' is nowhere pleaded in the plaint and therefore, the prayers made in the present Notice of Motion are not tenable. In the circumstances and in view of the above discussion, following order is passed :

ORDER

1. Notice of Motion No.1880 of 2026 is dismissed and disposed of accordingly.
2. Parties to bear their own costs.

Date: 22.07.2026

(PRASHANT C. KALE)
Judge, City Civil Court,
Greater Bombay.

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

22.07.2026 at 03.50 p.m.

N.S. Bakre

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (With Court Room Number)	HHJ SHRI. PRASHANT C. KALE (C.R.NO.06)
Date of pronouncement of Judgment/Order	22.07.2026
Judgment/Order signed by P.O. on	22.07.2026
Judgment/Order uploaded on	22.07.2026