

**Order below Exh.30**

1. Heard learned counsel for plaintiff and defendant. Perused the application and say. This is an application under order 11 Rule 14 read with 151 of Code of Civil Procedure. According to plaintiff defendant no.1 to 4 have erected windows and doors unauthorisely and against the municipal law. Due to which his esementary right are violated. Though defendants contended that, they have permission for construction, however, no such permission produced on record. Therefore, by this application plaintiff seeking direction be given to the defendants for production of construction permission. Defendant no.1 to 4 contended that, they have no documentary evidence regarding construction permission vide pursis Exh.42.

2. In order to fortify his contention learned counsel for plaintiff, placed his reliance on decision of **Hon'ble Bombay High Court, Nagpur Bench, in case of Vinayak S/o. Shankarrao Bapat and others .. Vs. The Superintendent of Police Chandrapur and others, 2006 All MR (Cri) 2044** in which their Lord Ships observed that, the encroacher or person who has raised unauthorised structure wants to perpetuate his illegality or irregularity as long as possible and for that purpose wants to engage himself in drawn legal battle. If in such situation any officer of sanctioning authority who has to defeat the action of local body before the Court is acting in collusion with such applicant, the local body may avoid to file reply or to avoid defend itself effectively and take adjournment. In that event, the proceeding in the Court can easily be delay by applicant and he can continue to enjoy the shelter of interim order. The local body or executive can,

thereafter, defend its inaction by pointing out such pendency in Court. The Court granting such temporary injunction, therefore, cannot forget its role as custodian and guardian of public interest and it has to safeguard such larger interest independently. Hence, if such temporary injunctions are granted, Court granting it must fixed and outer limit beyond which it will not operate. Not only this if it files that, local body/authority is not co-operating in the matter, it can record an order to that effect and imposed heavy costs upon such local authority or officer prima-facie found guilty in the matter. In appropriate cases, it can also direct that, such costs should be recovered from the officer concerned personally and it can also proceed in contempt against such body or officer.

3. As far as the present case is concerned there is not temporary injunction in favour of defendants. Further, the present suit is not concerning with rights of public at large. Therefore, I respectful mention that, the decision in above judgment is not applicable to fact of present case. It is true that, in the present case defendant no.5 Municipal Council, Ner, appeared after passing of Ex-parte order, but so far as the present application is concern, defendant no.1 to 4 has filed pursis Exh.42 which shows that, they have no documents regarding permission from municipal council. As per provision of order 11 Rule 14, Court can direct production of document to any party at any time during the pendency of suit. If such document is in possession or power of that party. But, as pursis Exh.42 clearly shows that, defendant no.1 to 4 have no such documents. In such situation it is not lawful to direct them to produce such document on record. Hence, I pass following order.

### **ORDER**

1. Application is hereby stands rejected.

2. Parties to bear their own costs.

(Pronounce in open Court).

Dt/- 20/7/2015

(S.G. Sarode),  
Civil Judge (Jr.Dn.), Ner