

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO.39990 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.39991 OF 2025

Shaikh Farooque Ahmed Abdul Latif .. Appellant
Versus
The Municipal Corporation for Greater Mumbai .. Respondent

- Mr. Mukesh S. Dubey, Advocate for Appellant.

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CORAM : MILIND N. JADHAV, J.
DATE : DECEMBER 18, 2025

P.C.:

- 1.** Not on Board. Mentioned by way of filing praecipe dated 18.12.2025. Perused the praecipe.
- 2.** Heard Mr. Dubey, learned Advocate for Appellant.
- 3.** By virtue of the impugned order dated 26.11.2025 dismissing the Notice of Motion filed by Plaintiff in respect of eligibility of the Plaintiff *qua* the suit premises namely Room No.6 situated in Jaitun Bi Chawl, CTS Nos.198, 198 /1 to 46, Village – Kurla IV, H.P. Keluskar Marg, Kurla, West, Mumbai – 400 070, the Plaintiff seeks urgent intervention of Court apprehending demolition threat from the Corporation.
- 4.** Mr. Dubey has drawn my attention to the impugned notice dated 02.09.2016 issued by the Corporation whereby under Section

351(1) read with Section 342 and Section 347 of the Mumbai Municipal Corporation, 1888 (for short 'the said Act') Plaintiff was called upon to furnish documentary evidence with respect to notice structure namely Room No.6. The allegation in the notice was only to the extent of Plaintiff having constructed rather extended the loft of the existing ground floor structure over and above the permissible height by area upto 3.4 meters as stated in the impugned notice.

5. Mr. Dubey has pointed out that in response to the said notice a detailed reply was filed with the Corporation dated 09.09.2016 which was acknowledge and received by Corporation on 12.09.2016. The stamp of acknowledgment of Corporation is appended at page No.10.

6. He would persuade me to consider the contents of the reply wherein the entire documentary evidence, *inter alia*, pertaining to the notice structure has been furnished and explained also appended to the said reply having been filed with the Corporation.

7. He would submit that speaking order by Designated Officer was passed on 19.09.2016 holding that Appellant did not submit any documentary evidence or reply contrary to the fact that Appellant has indeed filed his reply to the impugned notice.

8. Threat of the Corporation in the speaking order dated 19.09.2016 was to extent of calling upon Plaintiff to remove the

unauthorised extension work namely extended portion over the suit structure within seven days. Plaintiff immediately rushed to the Court and filed the substantive suit in 2016 and was protected since then.

9. After a hiatus of almost 10 years, the scenario has now changed, land prices have gone up and Plaintiff is now facing the heat from the Developer namely M/s. Rajdeep Associate. In that view of the matter, the Notice of Motion is now decided by the impugned order dated 26.11.2025.

10. On the issue of merits, Mr. Dubey has been able to *prima facie* convince the Court by drawing Court's attention to the documentary evidence, *inter alia*, relating to the notice structure pertaining to census of the said structure, the Ration Card, Electricity Bill, Telephone Bill, Electoral Roll and Slum Notification dating back in point of time which probably was the point of consideration which persuaded the Trial Court to protect the Plaintiff's structure since 2016.

11. The issue incidentally is extension of Plaintiff's structure and whether it is the mezzanine floor or first floor as is the case in respect of most of such structure in Mumbai city. Though Plaintiff may claim it to be the first floor, Mr. Dubey, in his usual fairness informs the Court across the bar that there was already a mezzanine floor which was already in existence since inception. This aspect would be the subject matter of trial.

12. *Prima facie*, I am convinced with the explanation given by Mr. Dubey on the basis of the documentary evidence which is placed before me in the compilation and therefore it is directed that no coercive steps shall be taken against Plaintiff's structure by the Corporation for which notice has been issued in furtherance of the impugned order which is the subject matter of the present Appeal from Order.

13. Hence, issue notice to Respondent.

14. Humdast permitted. In addition to Court's notice, Appellant is directed to serve the Respondent a copy of this order and copy of Appeal from Order and Interim Application and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof.

15. Respondent – Corporation is directed to file its Affidavit-in-Reply within a period of three weeks from today. Affidavit-in-Rejoinder, if any, to be filed within a period of one week thereafter.

16. Compilation of documents is taken on record. It shall be served on the Corporation.

17. Stand over to **29th January, 2026**.

18. Praecipe is disposed.