IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 302 OF 2023

Razak Hasan Dokadia
Age : 48 years, Occ- Business,
Indian Inhabitant of Mumbai,
Having his premises being Shop/Gala No.28
Akbar Ali/Munaf Compound
R.M. Road, Near Raghavendra Mandir,
Raghav Mandir Road,
Jageshwari (West),
Mumbai - 400012 ... Appellant.

Versus

The Municipal Corporation
of Greater Mumbai
A body Corporate, Established under
The Bombay Municipal Corpoation Act, 1888,
having its office at Mahapalika Bhavan,
Mahapalika Marg, Fort,
Mumbai – 400001 ... Respondent.

Mr. Shoaib Memon i/by Manjiri Parasnis for the Appellant.
Ms. Neeta Jadhav i/by Ms. Komal Punjabi for Respondent-Corporation.

Coram : Sharmila U. Deshmukh, J.
Date : June 19, 2026

ORAL JUDGMENT :

1. **Admit.** With consent taken for hearing forthwith.

2. The Appeal is preferred at the instance of the original Plaintiff being aggrieved by the order dated 5th April, 2023 passed

by the Trial Court rejecting the notice of motion seeking restraint order in respect of notice issued under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short "**MMC Act.**".

3. L.C. Suit No. 664 of 2023 was filed by the Plaintiff claiming that the plaintiff has been in use and occupation of Shop/Gala No.28 with Ladi Coba Slab by changing the A.C. Sheet Roof admeasuring 10 mtrs. X 3 mtrs., with 10 ft. Height, situated at Akbar Ali/Munaf Compound, R.M. Road, Near Raghavendra Mandir, Jogeshwari (West) Mumbai, which was described as the suit property since the year 2013. It was pleaded that no additions or alterations were carried out and not even the roof has been changed. Despite thereof, the Officer of the Corporation has issued notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short, "**MMC** ") on 2nd February, 2023 alleging that the Plaintiff has unauthorisedly changed the roof of the premises. The Plaintiff through his Advocate replied to the notice on 3rd February, 2023 and annexed all documents mentioning that no additions and alterations were carried out.

4. The notice of motion was taken out seeking temporary injunction against the Defendant from taking any action pursuant to the notice dated 2nd February, 2023.

5. The Defendant Corporation resisted the application contending that the Defendant had inspected the suit premises on 31st January, 2023 and observed ongoing unauthorized construction of changing of roof with Ladi Coba by using an angle with I-Beam with replacing A.C. Sheet roof. Photographs were taken and inspection report was prepared. It was contended that the notice under Section 354A of MMC Act was issued on 2nd February, 2023 to the Plaintiff, who filed his reply but did not produce any permission or sanction for erection of the work and hence, the speaking order was passed on 28th February, 2023 directing the Plaintiff to remove the notice structure.

6. Vide the impugned order, the Trial Court noted the inspection report of the Corporation about ongoing construction of change of roof and the photographs which shows that material evidencing the change of roof were lying on the spot. The Trial Court on the basis of the material placed on record by the Corporation was satisfied that the construction was an ongoing construction and that there was no permission or authorised document to prove that the notice structured is tolerated or it is already completed. The notice of motion came to be dismissed as against which the present appeal has been filed.

7. Learned counsel appearing for the Appellant has taken this Court through the notice issued under Section 354A of the MMC Act and would submit that the unauthorised work described therein was change of roof with Ladi Coba by using MS Angle with I-Beam replacing A.C. Sheet Roof. He submits that it was only the change of roof by replacing it with other material which did not require any permission from the Corporation. He would further point out a circular dated 6th January, 1987 and would submit that under the said circular, the replacement of the roof was permissible.

8. *Per contra*, learned counsel for the Corporation would support the impugned order and would point out the photographs which are placed on record. She would submit that under the provisions of Section 342 of the MMC Act, the permission of the Corporation is required for the purpose of schedule work and as the Trial Court has exercised the discretion based on the material on record, no interference is warranted.

9. I have considered the submissions and perused the record.

10. The notice under Section 354A of the MMC Act described the unauthorised work as under :

"Unauthorisedly change of roof with ladi coba by using M.S.

Angle and I-Beam with replacing A.C. Sheet roof adm. 10 mtr. X 3.6 mtr. (ht.) at Shop No. 28, Akbar Ali/ Munaf Compound, Near Raghvendra Mandir, Raghav Mandir Road, Jogeshwari (W) Mumbai 400 012"

11. The Plaintiff upon receipt of the notice filed his reply on 3rd February, 2023 stating that no unauthorised work has been carried out and claimed that the action has been taken based upon the complaint of some disgruntled people in the vicinity. The plaint also pleads that there is no unauthorised change of roof. Before the Trial Court, the argument was that the suit property is in existences since last many years. The applicability of Section 354A of MMC Act was questioned as notice structure was completed and tolerated. In view of the pleadings and the submissions canvassed, the Trial Court took note of the inspection report and the photographs which showed material relating to change of roof lying on the spot. There was no reason to doubt the inspection carried out by the officers of the Corporation and the photographs. Pertinently, the Plaintiff did not produce any document to show that the notice structure was tolerated structure.

12. Before this Court, a contrary stand is taken that the replacement of roof by different material does not require any

permission from the Corporation. In this context, if the provisions of Section 342 of the MMC Act are perused, the same provides for notice to be given to the Commissioner of intention to make additions, etc., or change of user of a building. The explanation defines "Tenantable repairs" and in clause (vii) of the explanation, it is stated that "Tenantable repairs" includes replacement of roof with the same material but shall not include different material.

13. The statutory provisions would negate the contention that for replacement of roof, no permission is required. The notice is in respect of replacement of roof of A.C. sheet with ladi coba and would require permission.

14. The reliance placed by learned counsel for the Appellant on the Circular of 6th January, 1987 is misplaced. The said circular was in respect of the decision taken to raise the height of the existing structure with mezzanine/attic floor, in cases where the premises are situated in Gaothans and Koliwadas, and does not apply to the present case. As the Plaintiff in the plaint has pleaded that he has not carried out any unauthorised work and the suit premises is tolerated structure, the circular even otherwise cannot assist the case of the Plaintiff. At the appellate stage, unless the perversity is demonstrated in exercise of the discretion by the Trial Court, no

interference is warranted.

15. In light of the above discussion, there is no merit in the Appeal. Appeal stands dismissed. Interim Application, if any, does not survive for consideration and stands disposed of.

[Sharmila U. Deshmukh, J.]

16. At this stage, request is made for stay of the order for a period of four weeks. Considering that there is no permission obtained by the Plaintiff, the request for stay is rejected.

[Sharmila U. Deshmukh, J.]