

SNS

**IN THE HIGH COURT OF JUDICATURE AT MUMBAI
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER NO.674 OF 2011
WITH
CIVIL APPLICATION NO.903 OF 2011**

Vinod K. Nayar

...Appellant.

v.

The M.C.G.M.

...Respondents.

Mr.R.S.Saisinghai a/w Chetan Radhaw & Ms Jeneita D'Silva, advs. For the Appellant.

Ms K.K.Soran, adv. For the Respondent/M.C.G.M.

CORAM : J.H. BHATIA, J.

DATED : JUNE 30, 2011.

P.C.

1 The appeal is filed against the refusal of ad-interim relief against the notice issued under Section 53 of the M.R.T.P. Act about the disputed structure. It appears that notice of motion is still pending. According to the plaintiff/appellant notice under Section 53 has been issued malafide and, therefore, Civil Court had jurisdiction to entertain the dispute. It is not necessary to enter into this question at this stage. That can be looked into by the trial Court, after hearing the parties. Suffice to state that there is bunch of documents, which provide some corroboration to the contention of the appellant that the alleged construction is not new. Therefore, in my opinion, appeal and the application may be disposed off with the following directions:

2 Defendant/respondent shall file reply and/or written statement before the trial Court within six weeks and the trial Court shall hear and dispose off the notice of motion within eight weeks thereafter. All the questions including tenability of the suit are left open to be decided by the trial Court. Till the decision of the notice of motion, parties shall maintain status-quo.

3 Appeal and the application stand disposed off accordingly.

(J.H. BHATIA,J.)