

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1036 OF 2015**

Disha Constructions

..Petitioners

Vs.

Solapur Municipal Corporation

..Respondent

Mr. Surel Shah for the Petitioners

Mr. D. G. Dhanure for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 6th FEBRUARY, 2015

P.C.

1 Not on board, papers produced for seeking urgent reliefs.

2 The Writ Jurisdiction of this Court is invoked against the order dated 16-12-2014, passed by the Learned Joint Civil Judge Junior Division, Solapur, by which order, the application Exhibit 34 filed by the Petitioners original Plaintiffs for directing the Defendant to produce the documents mentioned in the application came to be rejected and the Trial Court issued a direction that the Plaintiffs to complete their evidence and arguments on the preliminary issues within the next two dates and if the Plaintiffs failed to do so, the ad-interim order granted in their favour would automatically stand vacated. It is further directed that the Defendant is directed to complete its argument on or before the third date.

3 The documents are the ones which have been referred to in the said application Exhibit 34 and have been listed from Sr.Nos.1 to 9. It seems

that the Plaintiffs have produced copies of the 7 documents out of 9 and the copies which are not produced are the documents at Sr. No.4 and 5. The Plaintiffs had therefore filed the instant application Exhibit 34 for a direction to be issued to the Defendant Corporation to produce the originals of all the documents from Sr. Nos.1 to 9. The Trial Court as can be seen from the impugned order has rejected the application on the ground that the Plaintiffs are only delaying or protracting the adjudication of the preliminary issue. The Trial Court has adverted to the fact that the Plaintiffs have produced the documents at Sr. Nos.6, 7, 8 and 9 and in so far as the document at Sr. No.2 and 5 are concerned, the Trial Court has taken note of the fact that the Defendant- Corporation has denied the custody of the said two documents. The Trial Court has further observed that to adjudicate upon the preliminary issue it is not necessary to consider all the documents as mentioned by the Plaintiffs in the application.

4 In my view, it is not necessary to dilate upon this issue further, as at the stage of adjudicating upon the preliminary issue, the Trial Court can consider the documents produced by the Plaintiffs which the Plaintiffs claim are the copies of the original as it is not necessary at the said stage to go into the admissibility or proof of the said documents. Though the Trial court has referred to only the documents at Sr. Nos.6, 7, 8 and 9, the Plaintiffs it seems has also filed the copies of the documents at Sr. Nos.1 and 3. Hence the said

documents can also be taken into consideration by the Trial Court whilst adjudicating upon the said preliminary issue, if they are so required to be taken into consideration. Hence the Trial Court is directed to adjudicate upon the said issue as it has already observed in its order that all the documents are not necessary to be considered, in so far as the issue of jurisdiction is concerned. Needless to state that the consideration of the said documents at the stage of adjudication of the preliminary issue would not be construed as any expression of opinion by this Court or also by the Trial Court as regards the admissibility and proof of the said documents.

5 Since the Plaintiffs did not proceed with the matter in so far as the preliminary issue is concerned in terms of clause (2) of the operative part of the impugned order, the interim order which was in operation in the Suit stood vacated, in view of the impugned order in so far as clause (2) is concerned being self operative. It seems that pursuant to the interim order being vacated on account of the self operative order, the Respondent Corporation has issued a notice on 4-2-2015 under Section 268 of the Maharashtra Municipal Corporation Act, of demolition within 24 hours. A copy of the said notice dated 4-2-2015 is taken on record and marked as "X" for identification. In my view, it would be just and proper to reinstate the interim order dated 17-10-2014 by which the parties were directed to maintain status-quo till the decision is rendered on the said preliminary issue. The said interim order is accordingly

reinstated. The Petitioners/Plaintiffs would complete their evidence within two weeks from 9-2-2015. The Defendant would thereafter complete its evidence within two weeks thereafter. The Trial Court would decide the said preliminary issue within 6 weeks of 9-2-2015. It is clarified that the interim order by way of status-quo would operate till the decision is rendered on the said preliminary issue subject to the final order that would be passed by the Trial Court on the said preliminary issue. The contentions of the parties in so far as the said preliminary issue is concerned, are kept open for being urged before the Trial Court. The Learned Counsel Mr. Dhanure appearing for the Respondent Corporation states that the instant order would be communicated to the Respondent Corporation in the course of the day.

6 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]