

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3429 OF 2015
IN
CHAMBER SUMMONS NO.391 OF 2015
IN
L. C. SUIT NO.3327 OF 2014

Pandhari Motilal Yadav.] ... Petitioner

Versus

The Municipal Corporation of Greater Mumbai]
and Anr.] ... Respondents

Mr. A. M. Saraogi a/w Mr. B. S. Shukla for Petitioner.
Ms. Pallavi Thakur for Respondent No.1.
Mr. Ashok Pande a/w Mr. V. L. Desai for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- APRIL 27, 2015

P. C. :-

1. Rule. With the consent of and at the request of learned Counsel for the parties, Rule is made returnable forthwith.

2. After hearing the arguments for some time, the learned Counsel for Petitioner, after taking instructions from the Advocate on record as also the Petitioner, has made a statement that the Petitioner

does not press for leave to add prayer clauses (a-1) and (a-2), as indicated in the Schedule to the Chamber Summons. The two prayer clauses are at page nos.116/117 of the paper-book of this petition.

3. Insofar as the remaining clauses of the Schedule to the Chamber Summons are concerned, the same basically relate to events that have taken place subsequent to the institution of the suit. The trial in the suit is yet to commence. In these circumstances, no serious prejudice is occasioned to any of the Defendants, in case leave is granted to amend the plaint by incorporating the averments contained in paras 20(a) and 20(i) and paras 22(a) and 22(b) in the plaint.

4. Accordingly, Rule in this petition, can be made absolute only to the aforesaid extent. Although the Petitioner has chosen to withdraw claim of leave in terms of prayer clauses (a-1) and (a-2), it needs to be recorded that the Petitioner had earlier instituted another suit, which in effect, had questioned the demolition of the suit premises. The said suit was dismissed by the trial Court and such dismissal was confirmed by this Court as well. The said leave petition was also dismissed and a subsequent Review Petition was also not entertained by this Court. In such circumstances, the learned trial Judge was right in declining leave to amend the plaint, by once again seeking a declaration that the demolition of the suit premises was illegal or from seeking any restraint as envisaged in prayer clause (a-2) in the Schedule to the Chamber Summons.

5. Accordingly, Rule is made absolute to the aforesaid extent. The amendment to be carried out within two weeks from today. The Defendants are at liberty to file additional Written Statement within a period of four weeks from the date of service of the amended plaint.

6. All parties to act on the basis of authenticated copy of this Order.

(M. S. SONAK, J.)