

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 698 OF 2006
WITH
CIVIL APPLICATION NO. 1571 OF 2006

Thane Municipal Corporation .. Petitioner
VS.
Bhagchand K. Haryani & Anr. .. Respondents

Mr. Mandar Limaye with M. Agwekar for Petitioner.
Mr. Amol P. Mhatre for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition challenges 16 August 2005 made by the Civil Judge, Senior Division, Thane.

2] By order dated 16 August 2005, the Civil Judge, Senior Division, Thane, in exercise of powers under Order 39 Rule 11 of the Code of Civil Procedure, issued the following directions :

"ORDER

1. *The application is hereby allowed.*
2. *The defendant Municipal Commissioner / Dy. Commissioner of Thane Municipal Corporation is hereby directed to restore status-quo ante in respect of the suit property within 30 days from today and to restore the possession thereof to the plaintiffs, failing which the plaintiffs are at liberty to do so.*
3. *Cost in cause."*

3] The petitioner's appeal against the aforesaid order dated 16 August 2005 was dismissed by the District Judge, Thane by order dated 19 January 2006.

4] It is an admitted fact that during the pendency of the present proceedings, the respondents – plaintiffs have restored the *status quo ante*, in respect of the suit property, by way of putting up the construction, which had since been demolished by the petitioner.

5] In view of the aforesaid, no useful purpose would be served by going into the issue of legality or otherwise of the impugned order. This is because, at this stage, even if this Court were to come to the conclusion that powers under Order 39 Rule 11 were not rightly exercised, it would be too harsh to the respondents – plaintiffs to direct demolition of the structure, with a view to store the *status quo ante* prior to the making of the orders impugned in the present petition. Further, even if the exercise of powers under Order 39 Rule 11 is to be upheld, the only effect would be that the respondents / plaintiffs would be at liberty to restore the *status quo ante* in terms of order dated 16 August 2005, which *status – quo ante*, the respondents – plaintiffs have already restored in the meanwhile.

6] Accordingly, ends of justice will be met if the learned Civil Judge, Senior Division, Thane, is directed to dispose of Special Civil Suit No. 310 of 2005, in which the impugned orders came to be made, as expeditiously as possible and in any case within a period of one year from today. In the course of such suit, both the parties will be entitled to raise their respective contentions. Further it is clarified that there shall not be any restrictions upon the defences, which the petitioner may have with regard to the suit.

7] It is further directed that in deciding said suit, the Civil Court shall not be influenced by any of the observations made in the impugned orders.

8] It is clarified that this Court has also not gone into the respective merits of the matter and accordingly it shall be open to the learned Civil Judge, Senior Division, Thane, to decide the civil suit in accordance with law and with utmost expedition.

9] With the aforesaid observations, the present petition is disposed of. There shall be no order as to costs.

10] In view of the disposal of the writ petition, civil application does not survive and is disposed of accordingly.