

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8796 OF 2014

Shri. Samadhan Maruti Shinde .. Petitioner
vs.
Pune Municipal Corporation and ors. .. Respondents

Mr. S.S. Kanetkar for the Petitioner.
Mr. Abhijit Kulkarni for Respondent Nos.1 and 2.
Ms Neha Prachant i/b ALMT Legal for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 2 FEBRUARY , 2015.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] Mr. Kanetkar, learned counsel for the petitioner seeks leave to delete respondent Nos.4 to 22 from the array of respondents. Leave is granted as prayed for. Amendment to be carried out forthwith.
- 3] At the request of and with the consent of learned counsel for the parties, this petition is being disposed of finally, at the stage of admission.
- 4] This petition is directed against two orders dated 20 August 2014 made by the Small Causes Court at Pune, trying election petition instituted by the petitioner against the election of respondent No.3.

5] In so far as the order made on Exhibit-112 is concerned, the Small Causes Court at Pune has permitted the petitioner to produce on record the documents at Sr.Nos.1,2,4,5,6,7 and 12 and in so far as the documents at Sr.Nos.5/1 to 5/22 are concerned, it has been observed that the same shall be proved by the petitioner as per law.

6] The record would reveal that the petitioner had earlier made an application, seeking leave to produce on record certain documents, including *inter alia*, documents which was listed at Sr.No.5 and titled as "*copy of Nomination Paper of respondent No.3*". To the certified copy of this document, were listed with several annexures, which form a part of the annexures to the nomination papers. The Small Causes Court by order dated 3 December 2013, however, directed the petitioner to make a separate list in so far as the annexures are concerned. Incidentally, respondent Nos.1 and 2 had recorded their no objections for the production of the documents.

7] Accordingly, the petitioner took out a separate application marked as Exhibit-112, therein several annexures to the nomination papers were listed separately and marked as Sr.Nos.5/1 to 5/22. The nomination papers are pertain to respondent No.3. There is no

serious dispute that the documents at Sr.Nos.5/1 to 5/22 are the annexures to this nomination papers. At the stage when the order dated 3 December 2013 was made, there was no dispute raised with regard to the production of the said documents. Only as a matter of form, it was directed that a separate list ought to be submitted by numbering each of the documents.

8] In the aforesaid circumstances, there does not seem to be any justification for the Small Causes Court granting only conditional leave in matters of documents at Sr.Nos. 5/1 to 5/22. The application at Exhibit-112, ought to have been absolute. However, it could always been clarified that mere exhibition of documents on record, is not same thing as the proof of their contents thereof.

9] So far as the order made on Exhibit-113 is concerned, the same pertains to a report in relation to payment of arrears by respondent No.3. The report was obtained by the petitioner under the provisions of Right to Information Act. There is a serious dispute as to whether the issue of disqualification on the ground of alleged non-clearance of arrears, can at all be gone into an election petition. However, that issue need not be gone into, at this stage. For the

only reason, the Exhibit-113 was rejected is that the petitioner's examination-in-chief and cross-examination had already been concluded. The aforesaid reason, is not quite commendable. The petitioner has not applied for any leave to examine himself afresh. It is not clear as to whether the petitioner has closed his evidence by way of filing purshis. The respondents are yet to commence with their evidence. In such circumstances, no serious prejudice would have occasioned the respondents, in case, such report were to be permitted to have been produced on record. It could always be clarified that mere production of a report is by no means the same as proof of the contents thereof.

10] In matters such of these, there is bound to be some prejudice to the respondents. However that alone cannot be a ground for rejection of the applications for leave to produce the documents. The prejudice, if any, can always be compensated in terms of costs.

11] In the facts and circumstances of the present case, the applications under Exhibits-112 and 113 are allowed in their entirety. The impugned orders are modified to the aforesaid extent. It is further clarified that mere production or exhibition of the documents in-question, would not amount or ought not to be construed as proof

of the contents thereof. If the petitioner has not closed his evidence, then the petitioner can be permitted to prove the documents in accordance with law. Even if the petitioner has closed his evidence and if it is permissible for the petitioner to prove the documents by way of confronting the respondents in the course of cross-examination, then such a course may also be open to the petitioner. However, it is made clear that this order does not and ought not to be interpreted as dispensing with the proof of the contents of the documents, which have now been permitted to be exhibited.

12] In so far as the prejudice that is occasioned to the respondents is concerned, that may be compensated by awarding the costs in favour of respondent Nos. 1 and 3. Accordingly, the petitioner to pay the costs of Rs.5000/- (Rs. Five Thousand) each in favour of respondent Nos.1 and 3, within a period of two weeks from today.

13] The impugned orders are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent, with costs as aforesaid.

(M. S. SONAK, J.)