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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11908 OF 2015

Anandrao Vithoba Pawar .. Petitioner
Vs.
Mumbai Building Repair &
Reconstruction Board and others .. Respondents

Mr.S.S.Redekar, Advocate for the Petitioner.
Mr.Vineet B.Naik, Senior Advocate i/b Mr.Sharvan Jagtiani, for the
Respondent No.3.
Mr.Cyrus Ardeshir i/b Veritas Legal, Advocate for the Respondent
No.4.

CORAM : R.G.KETKAR, J.
DATED : 03rd DECEMBER, 2015

P.C. :

. Heard Mr.S.S.Redekar, learned Counsel for the
petitioner, Mr.Vineet B.Naik, Senior learned Counsel for the
respondent No.3 and Mr.Cyrus Ardeshir, learned Counsel for
respondent No.4 at length.

2. Mr.Redekar seeks leave to delete respondents No.1 & 2
from the present proceedings. On the motion made by Mr.Redekar,
respondents No. 1 & 2 are deleted. Amendment shall be carried out
forthwith.

3. Rule. Learned Counsel for respective respondents waive
service. At the request and by consent of the parties, Rule is made
returnable forthwith and the Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 19/08/2015 passed by the learned Judge, Bombay City Civil Court, Mumbai in Notice of Motion No. 3041 of 2014 in L.C.Suit No. 2672 of 2010 taken out by the petitioner-plaintiff for discarding paragraphs 2 to 11 from affidavit of evidence filed by D.W.1 -Shri Dilip Shrinivas Hate on 18/04/2013 on behalf of defendant No.3. The learned trial Judge directed that the said Motion will be considered at the time of final hearing of the Suit.

5. After arguing the Petition for some time, Mr.Naik, upon taking instructions, states that the impugned order may be set aside by consent of the parties and Motion may be restored to the file of the trial Court. The trial Judge, other than the Judge who passed the impugned order, may be directed to pass the appropriate order.

6. In view thereof, by consent of the parties, the Petition is disposed of in the following terms.

i) The impugned order is set aside.

ii) Notice of Motion No. 3041 of 2014 shall be decided on its own merits and in accordance with law at the earliest and hearing of that Motion shall not be adjourned till the final hearing of the Suit.

iii) The learned Principal Judge of the Civil Civil Court, Mumbai is requested to assign the matter to the Judge other than the Judge who has passed the impugned order.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)