

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11245 OF 2012

Bhimji Shivji Bhanushali ... Petitioner
Vs.
Municipal Corporation of Greater Bombay and another ... Respondents

Mr. Rajesh Kachare with Mr. S. M. Suryawanshi for Petitioner.
Ms Geeta Joglekar for Respondent No.1-BMC.
Ms Nilam S. Pawar for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 26, 2015

P.C. :

Heard Mr. Kachare, learned Counsel for petitioner, Ms Joglekar, learned Counsel for respondent No.1 and Ms Pawar, learned Counsel for respondent No.2 at length. Rule. Learned Counsel appearing for the parties 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.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 27.11.2012 passed by the learned trial Judge. By that order, the learned trial Judge vacated ad-interim order passed on 31.05.2012 for non-compliance of order dated 03.08.2012. By order dated 03.08.2012, Chamber Summons taken out by respondent No.2 for impleading it as party defendant was allowed and the plaintiff was directed to implead respondent No.2 and carry out amendment within two weeks and serve copy of the amended plaint on the defendant and newly added respondents No.1 and 2, within a period of two weeks from the date of the order. As the plaintiff did not comply that order, the learned trial

Judge vacated the ad-interim order.

3. Mr. Kachare submitted that aggrieved by order dated 03.08.2012, petitioner has instituted proceedings in this Court. On 23.11.2012, this Court issued notice to the respondents. Since the validity of the dated 03.08.2012 was under consideration of this Court, petitioner did not carry out the amendment and was awaiting the outcome of the Petition.

4. Ms Joglekar submitted to the orders of this Court. Ms Pawar submitted that the plaintiff may be directed to comply order dated 03.08.2012 within time bound manner, subject to plaintiff's right to challenge the order passed in Writ Petition No.8668 of 2012.

5. In view thereof, the impugned order dated 27.11.2012 is quashed and set aside and the ad-interim order dated 31.05.2012 is restored. The plaintiff shall comply the order dated 03.08.2012 within two weeks from today, subject to its right to challenge the order passed in Writ Petition No.8668 of 2012. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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