

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application NO. 61 OF 2016
IN
Writ Petition NO. 12569 OF 2015

MOHAMMED ISHAK KASIM ALI SHAIKH ...Applicant

Versus

MUNICIPAL CORPORATION OF GREATER
MUMBAI THROUGH ITS COMMISSIONER
AND ELECTION OFFICER AND ORS ...Respondents

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Mr. Shivraj Kunchge i/b. Yusuf Mohd. Khan, for the Applicant.
Mr. Vinod Mahadik, for Respondent No.1 – BMC.
Mr. R.K. Mendadkar, for Respondent No.3.

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CORAM : R. G. KETKAR, J.

DATE : 25th JANUARY, 2016

P.C.

1. Heard Mr. Shivraj Kunchge, learned Counsel for the applicant, Mr. Vinod Mahadik, learned Counsel for respondent No.1 – BMC and Mr. R.K. Mendadkar, learned Counsel for respondent No.3.

2. By this application, the applicant has sought extension of time beyond 22.12.2015 for appearing before the trial Court for facing the cross-examination.

3. The applicant herein instituted Writ Petition No.12569 of 2015 in this Court challenging the judgment and order dated 3.12.2015 below Exhibit-41 as also order dated 8.12.2015 below Exhibit-1 in Municipal Election Petition No.87 of 2012 passed by learned Additional Chief Judge, presiding over Court Room No.18 in the Court of Small Causes at Mumbai. By order dated 3.12.2015 below Exhibit-41, learned trial Judge rejected the application made by the applicant herein under Order VI Rule 17 of CPC. By order dated 8.12.2015 below Exhibit-1, learned trial Judge kept the matter for final arguments on 22.12.2015.

4. After hearing both sides, by order order dated 16.12.2015, Writ Petition was partly allowed. The order dated 3.12.2015 below Exhibit-41 rejecting the application under order VI Rule 17 of CPC for amending the written statement was upheld. In that order, the submission made on behalf of the applicant that he will file and serve copy of affidavit in lieu of examination-in-chief on the other side on or before 21.12.2015 and shall appear before the trial Court on 22.12.2015 for facing the cross-examination, was recorded.

5. Mr. Mendadkar submitted that pursuant to that order,

the applicant has filed and served copy of the affidavit in lieu of examination-in-chief on the other side. However, it is material to note that though assurance was given that the applicant will remain present for facing cross-examination on 22.12.2015, he did not remain present. I am now informed that the matter is kept on 27.1.2016 Mr. Kunchge assures upon taking instructions from the applicant who is present in Court that the applicant will remain present in the trial Court for facing cross-examination and will appear on the dates so fixed by trial Court for cross-examination. He further states that in case for any reason the applicant does not remain present for facing cross-examination, the trial Court will be at liberty to discard affidavit in examination-in-chief filed by the applicant. He further states that the applicant has filed application for transfer of proceedings to some other Court. Upon taking instructions from the applicant, he further states that he will not press that application for transfer.

6. In view thereof, Civil Application is disposed of in the following terms :

- i. Time stipulated in the order dated 16.12.2015 is extended

so as to enable the applicant to remain present in the trial Court on 30.1.2016 for facing cross-examination. The applicant shall remain present on the dates so fixed by the trial Court for cross-examination. In case on the date so fixed by the trial Court for cross-examination, the applicant does not remain present, the trial Court shall discard the affidavit in examination-in-chief of the applicant and close his evidence;

- ii. The application for transfer made by the applicant herein is disposed of as not pressed.
- iii. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)