

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1674 OF 2016

ASHOK KUMAR KOTHARI

...Petitioner

Versus

MUNICIPAL CORPORATION GREATER
MUMBAI

...Respondent

....

Ms. Aneeta Vasani i/b. Omprakash Pandey, Advocate for the
Petitioner.

Mr. Vinod Mahadik, Advocate for Respondent No.1 – BMC.

....

CORAM : R. G. KETKAR, J.

DATE : 10th FEBRUARY, 2016

P.C.

1. Heard Ms.Aneeta Vasani, learned Counsel for the
petitioner and Mr. Vinod Mahadik, learned Counsel for the
respondent, at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner, hereinafter referred to as the 'plaintiff', has
challenged the judgment and order dated 5.1.2016 passed by
learned Judge, presiding over Court Room No. 7 of the City Civil
Court at Dindoshi, Borivali Division, Mumbai in Chamber
Summons No.507/2015 in L.C. Suit No.331/2007. By that order,

learned trial Judge rejected the Chamber Summons taken out by the plaintiff under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short, 'CPC') for amending the plaint.

3. Ms. Vasani submitted that the plaintiff had temporarily shifted to Delhi for construction work with Delhi Airport Authority Limited. He, therefore, could not take out the proceedings for amending the plaint. She submitted that learned trial Judge observed in para-10 that earlier the plaintiff took out Notice of Motion No.1741 of 2014 and also filed affidavit on 23.7.2014 in support thereof for setting aside 'no-cross' order of DW-1. In that affidavit the plaintiff did not contend that he shifted to Delhi and worked for Delhi Airport Authority Limited. She submitted that recently she has got the documents to substantiate the claim of the plaintiff that he shifted to Delhi for construction work with Delhi Airport Authority Limited. She submitted that the plaintiff could not produce these documents when the Chamber Summons was heard by the trial Court. She, therefore, seeks permission to withdraw this Petition with liberty to file review petition seeking review of the impugned order.

4. On the motion made by Ms. Vasani, the Petition is allowed to be withdrawn with liberty as prayed for. It is made clear that grant of liberty shall not be construed as an expression of opinion on merits. All contentions of the respondents including objection as regards maintainability of the proposed proceedings are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)