

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.3053 OF 2016**

|                                                              |               |
|--------------------------------------------------------------|---------------|
| M/s Shree Ostwal Building Ltd                                | Petitioner    |
| Vs                                                           |               |
| The Commissioner<br>Mira Bhayander Municipal<br>Corporation. | .. Respondent |

Mr.Atul Damle, Senior Advocate, a/w Mr. Raju D Suryawanshi,  
Advocate for Petitioner.  
Mr. N.R.Bubna, Advocate for Respondent.

CORAM : R.G.KETKAR,J.  
DATE : 28/04/2016

**PC:**

1. Heard Mr.Atul Damle, learned senior counsel for the petitioner and Mr. N.R.Bubna, learned counsel for the respondent at length.
2. This petition is directed against the Judgment and order dated 13.1.2016 passed by the learned Principal District Judge, Thane in Misc. Civil Appeal No.131 of 2015. By that order, the learned District Judge allowed the Appeal preferred by the respondent, hereinafter referred to as defendant', and quashed and set aside the Judgment and order dated 2.5.2015 passed by the learned Jt. Civil Judge, Jr. Dn., Thane below Exh.5 in R.C.S.No.124 of 2015 and rejected the application made by the petitioner, hereinafter referred to as 'plaintiff', for temporary injunction. By order dated 2.5.2015, the learned trial Judge allowed the application made by the plaintiff for temporary

injunction and issued injunction restraining the defendant from taking further steps from stopping the work of construction in question.

3. Mr. Damale submitted that the plaintiff has instituted suit challenging the stop work notice dated 21.2.2015 (Page 116) issued by the Municipal Corporation of the defendant. After the appeal preferred by the defendant was allowed, the defendant issued notice on 20.2.2016 at Exhibit J (page 179). He submitted that during the pendency of the petition, the defendant has withdrawn the notice dated 20.2.2016 in view of the undertaking given by the plaintiff to this Court. He has tendered photocopy of the said communication which is taken on record and marked "X" for identification.

4. Mr. Damle submitted that the plaintiff has already tendered undertaking to this Court. The said undertaking is accepted. He submitted that in view of the communication dated 20.4.2016, notice dated 21.2.2015 impugned by the plaintiff as also notice dated 20.2.2016 stand withdrawn. He, therefore, submits that the impugned order passed by the learned District Judge may be set aside.

5. Mr. Bubna confirms that the notice dated 21.2.2015 at page 116 and notice dated 20.2.2016 at page 179 are identical. He submitted that the order passed by the learned District Judge, therefore, does not survive in view of communication dated

20.4.2016. He submitted that in fact the suit itself does not survive in view of communication dated 20.4.2016.

6. In view thereof, Mr. Damle submits that the plaintiff will file pursis before the trial Court for withdrawal of the suit. If such pursis is filed, the learned trial Judge will pass necessary order permitting the plaintiff to withdraw the suit as also refund of court fees as permissible in law. As the plaintiff has given undertaking to this Court which is accepted, the notices dated 21.2.2015 and 20.2.2016 stand withdrawn in view of the communication dated 20.4.2016. The impugned order passed by the learned District Judge in Misc. Appeal No.131 of 2015 stands dissolved. Petition is disposed of as not pressed. Order accordingly.

(R.G.KETKAR, J.)