

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3162 OF 2016

Mohammed Ishak Kasim Ali Shaikh

Son of Kasim Ali Shaikh

: Petitioner.

Versus

Municipal Corporation of Greater Mumbai

Through Commissioner and ors.

: Respondents.

Mr. Altaf Khan i/by Moinuddin Khan for the Petitioner.

Mr. Vinod Mahadik for the Respondent No.1.

Ms. D S Mondkar-Hule for the Respondent No.2.

Mr. R K Mendadkar for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 2nd April 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16/02/2016 passed by the learned Additional Chief Judge of the Small Causes Court by which order the Application (Exhibit 62) filed by the Petitioner herein i.e. the Respondent No.3 in the Municipal Election Petition No.87 of 2012 came to be rejected.

2 The Respondent No.3 herein is the Election Petitioner who has challenged the election of the Petitioner herein from Ward No.156 on the grounds mentioned in the Election Petition. In the said Election Petition the evidence of the Election Petitioner was completed on 5/11/2015. It appears that during the same contemporaneous time the concerned Caste Scrutiny

Committee was adjudicating upon the caste claim of the Respondent No.3 herein i.e. the Election Petitioner as belonging to Nhavi (OBC). The said adjudication culminated into an order dated 21/11/2015 passed by the Caste Scrutiny Committee validating the caste certificate of the Respondent No.3 herein i.e. the Election Petitioner as belonging to Nhavi (OBC).

3 The said Election Petition was at the stage when the Petitioner herein i.e. the Respondent No.3 to the Election Petition was to file affidavit of evidence in lieu of chief examination. However, in view of the adjudication by the Caste Scrutiny Committee vide its order dated 21/11/2015, the Respondent No.3 herein i.e. the Election Petitioner filed an Application (Exhibit 42) to place the said order of the Caste Scrutiny Committee dated 21/11/2015 on record. The said Application filed by the Respondent No.3 herein i.e. the Election Petitioner was allowed and the order passed by the Caste Scrutiny Committee was taken on record. This prompted the Petitioner herein to file the instant Application (Exhibit 62) for recall of the Respondent No.3 herein i.e. the Election Petitioner for cross examination on the basis of the said document i.e. the certified copy of the order of the Caste Scrutiny Committee.

4 The said Application has been rejected by the learned Additional Chief Judge of the Small Causes Court who is trying the Election Petition on two fold grounds. Firstly that what has been done by the Election Petitioner is

only placing the certified copy of the order passed by the Caste Scrutiny Committee validating his caste certificate on record and that the same would therefore not entail any cross examination on the part of the Petitioner herein i.e. the Respondent No.3 to the Election Petition. The second ground is that in terms of Order XVIII Rule 17 of the Code of Civil Procedure, it is only the Court if it requires any clarification that the witness can be called for re-examination. The learned Additional Chief Judge of the Small Causes Court has further observed that in the event the Court comes to a conclusion during the course of the trial that clarification is necessary, the Court undoubtedly be within its right to call the witness for re-examination. However, there is no warrant to grant any relief sought by the present Petitioner vide the said Application (Exhibit 62). In support of the contention that the Respondent No.3 herein i.e. the Election Petitioner be called for cross examination in view of the document filed vide Exhibit 42, reliance is sought to be placed on the judgment of a learned Single Judge of this Court reported in **2012 SCC OnLine Bom. 673** in the matter of **Daniel Vincent Philips and ors. v/s. Constancio Piedade D'Cruz and ors.** and especially paragraphs 9, 11 and 19. In my view, in the facts of the present case, the said judgment has no application.

5 In my view, having regard to the fact that what has been produced by the Respondent No.3 herein by way of Exhibit 42 is the certified copy of the order dated 21/11/2015 passed by the Caste Scrutiny Committee. The order

passed by the learned Additional Chief Judge, Small Causes Court, Mumbai cannot be faulted with. No case for interference in the writ jurisdiction of this Court is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]