

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4610 OF 2016**

Municipal Corporation of Gr.
Mumbai

Petitioner

Vs

Dinesh Raisi Sheth

.. Respondent

Mr. P.J.Thorat a/w Mr Vinod Mahadik i/b Nasir Ali Shaikh, Advocate
for Petitioner.

Mr. Dinesh C Shah, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 25/04/2016

PC:

1. Not on Board. At the request of Mr. Thorat, taken up for admission. Heard Mr. P.J. Thorat, learned counsel for the petitioner and Mr. Dinesh Shah, learned counsel for the respondent at length. Rule. Mr. Shah waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 7.4.2016 passed by the learned Judge, presiding over Court Room No.8 of the City Civil Court at Dindoshi, Bombay below Exhibit-8 in L.C.Suit No.2398 of 2015. By that order, the learned trial Judge has rejected the application made by the petitioner, herein after referred to as 'defendant' seeking permission to file additional affidavit in reply to the Notice of

Motion along with seven additional documents.

3. Mr. Thorat submitted that by order dated 29.1.2016 passed by the Division Bench of this Court (Coram: V.M.Kanade and Smt. Revati Mohite Dere, JJ.) in Contempt Petition No.1 of 2015 and other companion writ petitions and in particular paragraph 6 thereof, directed the trial Court to dispose of the Motion filed by owners/occupiers within four weeks. He submitted that by that order, the Division Bench directed the petitioner to bring to the notice of the trial Court the order passed by this Court. He submitted that in pursuance of that direction, the petitioner tendered additional affidavit dated 5.4.2016. He invited my attention to paragraphs 18 to 22 of the affidavit. He submitted that on 3.3.2016, the defendants have taken the photographs showing destruction of mangroves at Dharma Nagar, Borvali (W), Mumbai. The Corporation addressed a letter dated 3.3.2016 seeking remarks from the Forest Department (Mangroves Protection Department): Mangroves Protection Department remarks were received on 1.4.2016 along with photographs showing that there were no structure till 2005 and some Kacha structures were found in 2009 in the Google Map. Along with that, the defendants annexed the compilation. He submitted that by the impugned order, the learned trial Judge rejected the application on the ground that (i) the defendant has not made out a case for allowing to file additional affidavit and documents

at a belated stage; (ii) if at this stage the defendant is allowed to file additional reply and documents, hearing of disposal of the notice of motion would take further time as the plaintiff will have to avail further time to give response to rejoinder to this additional affidavit and documents. He submitted that the learned trial Judge after recording the submissions of the plaintiff, observed that he found merits in the submission of the advocate for the plaintiff. Mr Thorat submitted that the learned trial Judge has not considered relevancy of the facts set out in the affidavit in reply and whether they are necessary for deciding the controversy between the parties. He, therefore, submitted that the impugned order may be set aside by directing the trial Court to apply for extension of time before the Division Bench for disposing of the Motion.

4. On the other hand, Mr. Shah supported the impugned order. He submitted that though the order was passed on 29.1.2016, the affidavit is made on 5.4.2016 and there is no explanation for filing the affidavit at a belated stage. Apart from that, under Rule 188 of the Bombay City Civil Court and Sessions Courts Rules, 1948, additional affidavit cannot be filled and the said point is taken in the reply filed by the plaintiffs. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. Perusal of the impugned order shows that the learned trial Judge rejected the application without recording any reason. The

learned trial Judge, after considering the submissions advanced by the parties, merely recorded that he found merits in the submissions of Advocate for the plaintiff. Apart from that, what weighed with the trial Court is the order dated 29.1.2016 passed by the Division Bench of this Court directing the trial Court to dispose of the Motion within 4 weeks and which period was extended upto 27.4.2016.

6. This matter was moved before this Court on 16.4.2016 and was adjourned to 22.4.2016 so as to enable the petitioner to move the Division Bench of this Court for extending time for disposal of the Motion in terms of paragraph 6 of the order dated 29.1.2016. In pursuance thereof, the petitioner moved the Division of this Court. This Court did not extend the time at the instance of the parties on the ground that if the trial Court is unable to dispose of the matter within the outer limit fixed by this Court, then it is for that court to submit report to the Court for granting extension of time.

7. As noted earlier, the learned trial Judge without assigning any reason has rejected the application. In view thereof, the impugned order deserves to be set aside and application Exh.8 is restored to the file of the trial Court. The learned trial Judge will consider relevancy as also whether additional affidavit and documents are necessary for deciding the controversy between the parties. All contentions on merits are expressly kept open.

8. Rule is made absolute in the aforesaid terms with no order as to costs. The learned trial Judge will decide application Exh.8 and thereafter proceed with the trial. The learned trial Judge will consider applying to the Division Bench for suitable extension of time. Order accordingly.

(R.G.KETKAR, J.)