

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER NO. 408 OF 2016  
WITH  
CIVIL APPLICATION NO. 535 OF 2016  
IN  
APPEAL FROM ORDER NO. 408 OF 2016

Star of India Restaurant

...Appellant

Versus

Municipal Corporation for Gr.  
Mumbai

...Respondent

.....

Mr. Ashok Pande for the Appellant.

Mr. A. V. Diwate for the Respondent-BMC.

CORAM : G. S. KULKARNI, J.

DATE : 26<sup>th</sup> APRIL, 2016.

P. C. :

1. This appeal has been filed by the appellant/original plaintiff by which an order dated 07.04.2006 on draft Notice of Motion taken out on behalf of the plaintiff has been rejected. This appeal was heard on 22.04.2016 as also I have heard the learned counsel for the parties at the listing of this appeal today.

2. After the matter was heard for some time, Mr. Pande, learned counsel for the appellant seeks leave to withdraw this appeal and approach the Trial Court with a request to take up the Notice of

Motion for hearing in regard to the reliefs as prayed therein. Considering the facts and circumstances of the case the request of Mr. Pande is appropriate. Accordingly the appeal is allowed to be withdrawn and disposed of as such.

3. The appellant is at liberty to approach the Trial Court with a request to take up the hearing of the Notice of Motion in question. The respondent-Corporation shall file its reply within a period of two weeks from today. Learned counsel for the respondent-Corporation agrees that the Corporation would file a reply affidavit to the Notice of Motion within a period of two weeks from today. As soon as the pleadings in the matter are completed, the appellant would be at liberty to request the learned Trial Court to take up the Notice of Motion for hearing, which shall be considered on its own merits.

4. The Civil Application also does not survive and the same is disposed of.

**(G. S. KULKARNI, J.)**