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

WRIT PETITION NO. 7325 OF 2015

Municipal Corporation of Greater Mumbai. ... Petitioner.

V/s.

Kishor Dhondu Chavan. ... Respondent.

Mr. Vinod Mahadik i/b. U.H. Deshpande for the Petitioner.

Ms. Pratibha Shelke i/b. P.J. Thorat for the Respondent.

CORAM : N.M. Jamdar, J.

20 September, 2016.

Oral Order :-

By order dated 30 August 2016 the parties were put to notice that the Petition will be disposed of finally at the admission stage. Accordingly, taken up for consideration.

2. The Suit has been filed by the Respondent challenging notice issued by the Petitioner – Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888. The Suit was dismissed by the learned City Civil Court. First Appeal No.112 of 2012 was filed by the Respondent – Plaintiff which was

allowed and the Suit was remanded for consideration to the City Civil Court by this Court. By order dated 25 June 2013, the Petitioner was directed to file written statement on or before 14 August 2013. The application for written statement to be taken on record was rejected by the learned City Civil Court Judge by order dated 21 July 2014.

3. Heard the learned Counsel for the parties.

4. The learned Counsel for the Petitioner has tendered a photocopy of the written statement which shows it was affirmed on 19 November 2014 i.e. after the order passed. There is negligence on the part of the Petitioner in not filing the written statement inspite of the specific directions of this Court to file the same on or before 14 August 2013. Since the Petitioner is espousing the cause in public interest inasmuch as it has issued a notice to the Respondent for violation of planning laws and this cause will suffer if written statement is not filed and the case of the Petitioner – Corporation is not put forth on merits, therefore, I am inclined to grant indulgence to the Petitioner – Corporation to file written statement subject to the cost of Rs.10,000/- to be paid to the Respondent. This cost is necessary to be imposed that even though the time had expired in August 2013, an application for extension which was made so after period of almost one year was rejected by

this Court. Accordingly, the Writ Petition is disposed of as under :-

(a) The order passed by the learned City Civil Court dated 21 July 2014 is quashed and set aside subject to the Petitioner – Corporation paying cost of Rs.10,000/- to the Respondent within period of eight weeks from today. After the cost is so paid, the Petitioner – Corporation will file written statement within period of four weeks from that date.

(N.M. Jamdar, J.)