

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6992 OF 2014**

Shri Suresh Hemraj Shah @ Gala

..Petitioner

Vs

The Municipal Corporation of
City of Thane

.. Respondent

Mr.Pawan S. Patil, Advocate for Petitioner.

Mr. Ajit R.Pitale a/w Mr C.S. Jadhav, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 14/01/2016

PC:

1. Heard Mr. Pawan Patil, learned counsel for the petitioner and Mr. Ajit Pitale, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 8.7.2014 passed by the learned 3rd Jt. Civil Judge, Sr. Dn., Thane below Exhibit 108 in R.C.S.No.268 of 2000. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'plaintiff', for de-exhibiting the documents produced by the respondent, hereinafter referred to as 'defendant', other than document at sr.no.1 produced along with the list dated 8.7.2014.
3. Mr. Patil submitted that the plaintiff has instituted suit for declaration that the order dated 10.3.2000 passed by the

defendant, is illegal and unwarranted; for injunction restraining the defendant from acting upon the said order. He submitted that the plaintiff filed affidavit of examination-in-chief along with the documents. The plaintiff thereafter filed application dated 8.7.2014 at Exhibit 97 calling upon the defendant to produce following documents:

1. Resolution no.198 dated 20.2.1998 passed by the Corporation;
2. Letter bearing TMC/SVV/4939 dated 6.10.2010;
3. Permission/commencement certificate dated 2.12.2009 granted by defendant to M/s Maratha Mandal Thane.

4. He submitted that in pursuance of this application, the defendant produced resolution dated 20.2.1998 at sr. no. 1 above and did not produce documents at sr. nos.2 and 3. However, the defendant produced other documents along with the list at Exhibit 98 dated 8.7.2014 which were not sought for by the plaintiff. The learned trial Judge allowed production of these documents as also exhibited these documents without giving any opportunity to the plaintiff. It is in these circumstances, the plaintiff filed the present application for de-exhibiting documents produced by the defendant-corporation other than resolution dated 20.2.1998 at serial no.1. By the impugned order, the learned trial Judge rejected the application on the ground that mere marking exhibit to the documents or admitting those

documents in evidence does not mean that the contents thereof are proved. He submitted that basically without filing affidavit of evidence the defendant could not have produced these documents and consequently the learned trial Judge could not have admitted these documents in evidence and marked as exhibits. He, therefore, submitted that the impugned order is liable to be set aside.

5. On the other had, Mr.Pitale supported the impugned order.

6. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the list Exhibit 98 shows that the defendant has produced the following documents apart from resolution dated 20.2.1998 at serial no.1.

- (2) Resolution No.10 dated 30.6.1986;
- (3) Resolution No.15 dated 21.4.2006;
- (4) Commencement Certificate dated 30.4.2014.
- (5) Government Notification dated 4.10.1999;
- (6) Letter dated 8.4.2003 issued by Dy. Secretary, Urban Dev. Department;
- (7) Govt. Notification No.3/4/2003.
- (8) Letter dated 5.10.2013 issued by defendants to the plaintiff.

7. Perusal of the above documents shows that they are various Resolutions passed by the defendant and

Commencement Certificate issued by the defendant, Government Notifications and letters issued either by the defendant to the plaintiff or issued by Dy Secretary Urban Development Department. In paragraph 3 of the impugned order, the learned trial Judge observed that by virtue of Section 74 of the Indian Evidence Act, 1872 (for short, Act) they are public documents and no formal proof for its admission is necessary. Rest of documents are verified copies of the State Government Gazette and, that too, have been issued by officers of the Corporation. There is, therefore, no illegality in admitting those documents in evidence and marking them as exhibits numbers. It was further observed that mere marking of exhibits to the documents or admitting particular document in evidence does not mean that the contents thereof are proved.

8. The learned trial Judge also observed in paragraph 4 that the suit is pending since last 14 years and the issue whether the documents produced by the defendants other than document no.1 are relevant or irrelevant, is kept open for discussion. In view thereof, I do not find that any case is made out for invocation of powers under section 227 of the Constitution of India. The learned trial Judge has kept open the issue whether the documents produced by the defendant are relevant or irrelevant and that apart it is also subject to proof of contents of

documents. Hence, Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)