

Sequeira

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

WRIT PETITION NO. 3249 OF 2017

Kalpesh Kumar Parmanand Dave. .. Petitioner
Vs
M/s Ish Homes Private Limited. .. Respondent

Mr.Mayur Khandeparkar a/w Mr.Tanvir Shaikh, for the Petitioner.

***Coram : N.M.Jamdar, J.
Date : 16 March 2017.***

P.C. :

Not on board. Taken on production board by way of praecipe.

2. The Petitioner has challenged the order dated 9 February 2017 passed by the learned Small Causes Court Judge, Mumbai permitting the Respondent to amend the plaint and to bring on record the factum of notice dated 14 July 2015 issued by the Planning Authority.

3. The learned counsel for the Petitioner submitted that the Suit is at the stage of hearing. Written submissions have been filed. Notice was issued on the complaint made by the Respondent during the pendency of the Suit and this notice has no relevance for the adjudication, so also prejudice would be caused to the Petitioner.

3. The learned Small Causes Court Judge has exercised its discretion in permitting the Respondent to produce the notice on record which is dated 14 July 2015, treating it as a subsequent event. It is an admitted position that the notice of the Planning Authority is subsequent to the filing of the suit. As far as prejudice to the Petitioner is concerned, it can be redressed by permitting the Petitioner to file an additional Written statement as well as all contentions of the Petitioner regarding the said notice can be kept open.

4. Accordingly, the Writ Petition is disposed of by keeping all contentions of the Petitioner regarding the amended portion, open. The Petitioner will be entitled to file an additional Written statement. It is clarified that merely because this Court has not interfered with the discretionary order passed by the learned Judge, the arguments of the Petitioner regarding the merits of the amended portion are not foreclosed and the suit will be tried on its own merits.

(N.M.Jamdar, J.)