

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

**CIVIL APPLICATION NO.955 OF 2017
IN
WRIT PETITION NO.2912 OF 2017**

**Smt.Bharati Bhargawa : Applicant/orig.Respondent No.4
versus
Ashok Kirtibhai Mehta & anr. : Petitioners
And
K B Kenga and ors. : Respondents.**

Mr. Pankaj Savant, Senior Advocate a/w Mr. C K Sancheti i/by Mr. Deep Shridharani for the Applicant/Respondent No.4.

Mr. Hemant Mehta i/by Mehta & Co. for the original Petitioners.

Mr. Y S Jahagirdar, Senior Advocate i/by Mr. S S Kanetkar for the Respondent No.2.

Mr. S D Rayrikar, AGP for the Respondent No.8.

CORAM : R. M. SAVANT, J.

DATE : 21st APRIL 2017

P.C.

1 The above Civil Application has been filed for claiming relief of recall of the order dated 22/03/2017 passed by this Court in the above Writ Petition No.2912 of 2017. By the said order dated 22/03/2017 the above Petition was disposed of in terms of the Minutes of the Order which were filed on behalf of the Petitioner and the Respondent No.2 to the said Petition. The sum and substance of the said order was that the Application/Representation filed by the Petitioner and Respondent No.2 for transfer/grant of lease of Plot No.89, admeasuring about 560 sq. yds. is to be considered by the Chief Officer, MHADB. As the said Minutes of the Order disclose all the rights and

contentions of the Petitioners and the Respondent No.2 were kept open and vide clause 2 of the said order it is clarified that the Minutes of the Order should not be construed as acceptance/adjudication of the rights claimed by the Petitioners.

2 The above Civil Application was founded on certain allegations revolving around the issue as to whether notice was served upon the Applicant herein i.e. the original Respondent No.4 to the Petition. However, the learned counsel appearing on behalf of the Applicant herein has now tendered an affidavit of the Applicant/Respondent No.4 Smt. Bharti Bhargava bearing today's date wherein she has undertaken to unconditionally withdraw the above Civil Application No.955 of 2017 as also unconditionally withdraw upon all the allegations made by her in the above Civil Application. The said affidavit was filed so that her case of being heard in the proceedings before the Chief Officer, MHADB could be considered. The learned Senior Counsel for the Applicant Shri Pankaj Savant on instructions of the Respondent No.4 who is personally present in Court states that the Applicant/Respondent No.4 accepts the order passed by the Appellate Authority as modified by the order dated 22/03/2017 passed by this Court.

3 In the light of the said affidavit and with the consensus of the learned counsel for the parties i.e. Shri Mehta for the original Petitioners, Shri

Y S Jahagirdar for the Respondent No.2 and Shri Pankaj Savant for the Applicant/Respondent No.4 the following directions are issued :-

- i] The above Civil Application is allowed to be withdrawn in terms of the affidavit filed by the Applicant and is accordingly disposed of as such.
- ii] If an Application is filed by the Applicant before the Chief Officer, MHADB for being heard in respect of the subject matter of the Minutes of the Order dated 22/03/2017, the said Application would be considered by the Chief Officer, MHADB on its own merits and in accordance with law. The said Application would be filed within two weeks from date. If the Application is not filed within two weeks, then the instant order would not enure to the benefit of the Applicant/Respondent No.4.
- iii] The contentions of the parties as regards locus standi of the Applicant/Respondent No.4 are kept open for being urged before the Appellate Authority.
- iv] The rights and contentions of the Applicant/Respondent No.4 qua the Application/Representation filed by the Petitioners and the

Respondent No.2 are also kept open.

v] It is clarified that this shall not be construed as the acceptance/adjudication of the rights claimed by the Applicant/Respondent No.4.

vi] The aforesaid directions would operate in addition to the directions as contained in the order dated 22/03/2017.

[R.M.SAVANT, J]