

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

WRIT PETITION NO. 8388 OF 2017

Municipal Corporation of Greater Mumbai ...Petitioner

Versus

Hanif Mohamed Yusuf Qureshi ...Respondent

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Mr. Ranjit A. Thorat, Senior Advocate i/b. Mr.Pradeep Patil for the
Petitioner- BMC.

Mr. Khan Javed Akhtar for the Respondent.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 25, 2017

P.C. :

1. Not on board. Upon mentioning, taken on board.
2. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
3. This petition is directed against the order dated 18.03.2017 passed by the learned Judge, City Civil Court, Greater Bombay, below Exhibit 30 in L.C. Suit No. 3795 of 2007
4. An application below Exhibit 30 was moved by the petitioner/defendant on 22.06.2016 seeking permission to produce the

assessment record. This application was moved at late stage when the evidence of both the parties was over and the arguments were to be advanced. The said application was rejected by the learned Judge.

5. The learned senior counsel for the petitioner-Municipal Corporation submits that the Municipal Corporation has issued a notice to respondents on the ground of additional construction of the premises and the said notice is challenged by the respondent/plaintiff in the Suit before the City Civil Court, Mumbai. He further submits that the notice was issued for the extended unauthorized portion and to prove the fact of the unauthorized extension, the Municipal Corporation wants to rely on the remarks of the Assessment Department and also the enhancement in the rateable value, which is based on the remarks of the Assessment Department. He admits that there was an inordinate delay on the part of the Municipal Corporation to produce these documents. However, this application can be allowed by giving an opportunity to the respondent /plaintiff to cross examine the witness of the Municipal Corporation on the point of the said documents.

6. The learned counsel for the respondent while opposing the Petition, has submitted that the learned Judge while rejecting the said application has considered the progress in the Suit. The Suit is of the

year 2007. The defendant had filed a pursis for closure of evidence on 28.09.2015 and nearly after 9 to 10 months, the application for producing fresh evidence was moved before the trial Court. He further submits that these are the tactics to protract the trial. The petitioner-Municipal Corporation was very much in custody of these documents and these documents ought to have been produced by the petitioner-Municipal Corporation. Moreover, in the list of the documents produced alongwith written statement, the Municipal Corporation did not mention these documents i.e. relevant assessment extracts of 11 years.

7. Perused the impugned order. Undoubtedly, there is a gross delay in producing the said documents before the trial Court. The trial Court has passed a reasoned order while rejecting the application. However, the Court cannot lose sight for considering the nature of the Suit. These documents are very important to prove the fact whether the construction is unauthorized or not, though the application is made at the stage of final submissions of the counsel for both the parties. The documents should come on record for adjudication of the issue before the Court.

8. Hence, I set aside the order dated 18.03.2017 passed by the learned Judge, City Civil Court, Mumbai. I allow this petition with following order:

ORDER

- (i) Rule made absolute in terms of prayer clause (b), subject to payment of costs of Rs. 10,000/- which is to be paid in the trial Court within a period of two weeks.
- (ii) The petitioner-Municipal Corporation shall produce the documents alongwith necessary evidence on or before 04.08.2017 and thereafter the respondent/ plaintiff be allowed to take cross examination.
- (iii) The parties shall co-operate and shall not seek adjournment.
- (iv) The suit is to be heard and decided finally on or before 10.10.2017.

9. Parties to act upon an authenticated copy of the order.

10. Writ petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)