

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7371 OF 2009

Mohammed Siddik Allauddin Ansari	...Petitioner
Vs.	
Pune Municipal Corporation and Ors.	...Respondents

Mr. Jeet Gandhi for Petitioner
Mr. Rajdeep Khadapkar for Respondent Nos. 1 to 4

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

P.C:-

1. Mr. Gandhi, learned counsel for the Petitioner undertakes to file his Vakalatnama by 11th September, 2017. At his request, the petition is taken up for consideration.
2. This petition under Article 227 of the Constitution of India challenges the order dated 4th March, 2009 passed by the District Judge, Pune, dismissing the petitioner's appeal. By the impugned order, the appeal of the Petitioner from the order dated 1st August, 2007 of the trial Court dismissing the Petitioner's (Original Plaintiff) suit for failure to give mandatory notice under section 487 of the Bombay Provincial Municipal Corporation Act (now known as 'Maharashtra Municipal Corporation Act') (Act) was upheld.
3. The impugned order dated 4th March, 2009 , inter alia, records the fact that the Respondent Corporation had raised an objection before the

Trial Court about the maintainability of the suit for failure to give notice under section 487 of the Act prior to the institution of the suit. The impugned order holds that the Petitioner herein (Original Plaintiff) has failed to prove and to bring on record any notice served upon the Respondent Corporation. It also records that the witness of the Petitioner (Original Plaintiff) during the cross examination was unable to state whether any such statutory notice as required under the Act was given prior to the institution of the suit. Nor any attempt has been made to justify filing of the suit without notice.

4. Mr. Gandhi, learned counsel for the Petitioner sought to bring to my notice the merits of the dispute between the Corporation and Petitioner. However, that issue does not arise out of the impugned order as the suit itself was dismissed as not maintainable for failure to give the statutory notice.

5. The view taken by the impugned order is a view in accordance with the law and would not call for any interference in my supervisory jurisdiction under Article 227 of the Constitution of India.

6. Accordingly, the petition is dismissed.

(M.S.SANKLECHA,J.)