

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8085 OF 2014

Sau.Girijabai Sudhakar Bhalerao .. Petitioner
Vs.
Kalyan Dombivali Municipal
Corporation, Kalyan and ors. .. Respondents

Mr.D.S.Pagare, for the Petitioner.
Mr.Prashant Kamble i/b Mr.A.S.Rao, for Respondent No.1.
Mr.S.G.Karandikar, for Respondents No.2/1 to 2/6 & 3 to 15.

CORAM : M.S.KARNIK, J.
02nd FEBRUARY, 2017

P.C. :

. The petitioner who is the original plaintiff has filed the Suit against respondent No.1 – Kalyan Dombivali Municipal Corporation, Kalyan restraining the respondent No.1 from encroaching upon and constructing the public toilet on the land belonging to the petitioner. It is the petitioner's case that despite the trial Court's granting an order of status-quo during the pendency of the Suit, respondent No.1 proceeded with the construction of the toilet block. Accordingly, he filed an application for removal of the said structure. According to the

respondent No.1 – Corporation, the said structure was constructed prior to the grant of status-quo order.

2. Learned trial Judge by the impugned order was pleased to reject the application - Exhibit 143 for amendment filed by the petitioner as barred by limitation. In my opinion, instead of rejecting the application at this stage, application for amendment could have been allowed by keeping the question of limitation open to be tried at the appropriate stage.

3. In this view of the matter, I am inclined to allow this Petition. The Petition is allowed in terms of prayer clause (a). It is made clear that the issue of limitation and all other issues factually raised in the application for amendment are kept open. Learned Counsel for the petitioner to produce authenticated copy of this order passed today before the trial Court on 13/02/2017 with a request to take the matter on board. The petitioner to carry out consequential amendment within a period of 2 weeks from 13/02/2017. Liberty is granted to the

respondents to file additional written statement within such time which the trial Court may deem fit. Writ Petition is accordingly disposed of.

(M.S.KARNIK, J.)