

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10978 OF 2017**

Nalini Pratapsinha Kadam & Anr ...Petitioners
Versus
Champion Enterprises through its partners & Ors ...Respondents

Mr Shriram S Chaudhari, *for the Petitioners.*

CORAM: G.S. PATEL, J
DATED: 15th November 2017

PC:-

1. Heard.
2. The challenge is to an order of 2nd August 2017 of the 6th Additional Judge, Court of Small Causes at Mumbai and Joint Civil Judge, Senior Division, Pune rejecting the Petitioners' application for striking out the Plaintiffs' pleading. The Petitioners are original Defendants nos. 1 and 2. Defendants Nos. 3 and 4 are Respondents nos. 4 and 5 to this petition.
3. A question before the Trial Court arose about the maintainability of the suit, viz., whether it could be prosecuted against the present Respondents nos. 4 and 5, the Municipal Corporation and its officers, without a statutory notice having been

issued. Faced with this, the Plaintiffs applied for deletion of their prayers for relief against those Defendants. The municipal defendants themselves were not dropped, and the averments in the plaint against the Municipal Corporation also remained.

4. The present Petitioners, original Defendants nos. 1 and 2, moved to strike out those portions of the plaint directed against the Municipal Corporation and also sought the deletion of the Municipal Corporation and its officers as party Defendants to the suit, on the footing that since no reliefs were any longer sought against the Municipal defendants, the pleadings relating to the municipal defendants and the continuance of the Municipal Corporation and its officers as defendants were all unnecessary. The Petitioners/Defendants 1 and 2 also sought that certain documents be struck from the record.

5. The Trial Court held that the portions sought to be deleted were unnecessary, scandalous, frivolous and vexatious. It rejected the application.

6. It is entirely possible that the averments in question might be necessary as a foundational pleading even if in this suit no relief is sought against the Municipal Corporation. The Plaintiffs had not sought relief under Order II Rule 2 of the Code of Civil Procedure 1908 and the Plaintiffs will undoubtedly have to take the consequences, if any, of the deletion of the prayers. It is equally clear that it is open to Defendants nos. 1 and 2, the present Petitioners, to raise all contentions in their written statement at

every stage including at the stage of evidence. No prejudice whatsoever is caused to the Defendants if the Plaintiffs' pleadings continue as they are. There is no question of the court removing documents at this stage when the written statement has not yet been filed. The Plaintiffs may yet be entitled to lead those documents in evidence if they can show relevance and admissibility. It is entirely possible that this evidence about the Municipal Corporation and its documents may be found to be relevant in the pursuit of relief against the present Petitioners. That is a matter to be decided at the trial. If the documents are relevant, there must be a foundational pleading. A plaint cannot be cut off at the knees or hobbled in this fashion.

7. In my view, there is no call for interference with the impugned order. The Trial Court has repeatedly instructed the Petitioners to file a written statement but they chose not to do so. That cannot be allowed. The Trial Court will not adjourn the matter any further for the written statement of the Petitioners. I am told that the date of filing the written statement is 18th November 2017. That date is not to be adjourned under any circumstances whatsoever.

8. The Petitioners may take all available defences in the written statement but they will file written statement on that date.

9. No costs.

(G. S. PATEL, J)