

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

WRIT PETITION NO.11814 OF 2015

Mr.Shantilal Jugraj Kawediya

...Petitioner

vs.

Pune Municipal Corporation through
Commissioner & Ors.

...Respondents

Mr. Amit Karva i/b Jagriti P. Mutha for the Petitioner.

Mr.Vishwanath Patil for Respondent No.1/BMC.

Mr. Ashok B. Tajane for Respondent Nos.2 and 3.

CORAM : SMT SADHANA S. JADHAV, J.

DATE : 4th October, 2017

PC.:

. Rule. Learned counsel for the Respondents waives service. By consent, the Rule is made returnable forthwith.

2. Mr. Karva, learned counsel for the Petitioner fairly submits that the recording of evidence in Regular Civil Suit No.985/2007 is concluded and the matter is fixed for hearing. At this stage, it would not be appropriate to permit the Petitioner to amend the complaint as it would be a futile exercise.

3. Mr.Tajane, learned counsel appearing for Respondent Nos.2 and 3 submits that the Petitioner herein had sought amendment of the complaint on an earlier occasion also and the same was allowed and, therefore, it would not be appropriate to protract the proceedings any further. He further submits that the statement made by the learned counsel for the Petitioner is based upon the instructions given to him by the Plaintiff. However, according to Mr. Tajane, the correct position is that there are two suits i.e. the suit filed by Respondent Nos.2 and 3 against the Municipal Corporation and there is a direction that both the suits be tried

simultaneously. It is the contention of Mr.Tajane, learned counsel that the Plaintiff is not leading evidence in the Regular Civil Suit No.985/2007. The Plaintiff in RCS Suit No.985/2007 is hereby directed to lead evidence by 10/11/2017. Upon failure to lead evidence within the given time, the learned Trial Court shall take appropriate steps in accordance with law.

4. In any case, it appears that the Application was filed under Order 6 Rule 17 of the CPC. However, all the contentions are kept open for the Petitioner to urge at the stage of hearing and the same may be taken into consideration by the learned Trial Court.

5. In view of the above, the Petition stands disposed of. Rule stand discharged.

(SMT SADHANA S. JADHAV, J.)