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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2057 OF 2014**

Shri Abdul Rahman Dadumiya	... Petitioner
Vs.	
Bombay Municipal Corporation & Ors.	... Respondents

Mr. Satyendra B. Singh for the Petitioner.
Mrs. Geeta Joglekar for the Respondent – BMC.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 26th JULY, 2017

PC.

1 Heard the learned counsel appearing for the petitioner. The petitioner had filed Writ Petition No.590 of 2013 in this Court on the same cause of action. In fact, the substantive prayers made in this Petition and the earlier Petition are the same. By order dated 22nd March, 2013, on the prayer made by the petitioner, the said Writ Petition was dismissed as withdrawn by granting liberty to the petitioner to adopt appropriate remedy. Paragraphs 1 and 2 of the said order read thus :-

“1. When we invited attention of the learned Counsel appearing for the petitioner to the assertions made in the synopsis as also in paragraph 11 of the petition, the

learned Counsel appearing for the petitioner seeks permission to unconditionally withdraw the allegations made against the learned Trial Judge. He seeks permission to withdraw the petition with liberty to file appropriate proceedings.

2. We accept the statement made by the learned Counsel appearing for the petitioner that the allegations made in the synopsis and petition against the learned Trial Judge have been unconditionally withdrawn.”

2 A copy of the said Writ Petition is annexed to the additional affidavit dated 7th July, 2017. In the earlier Petition, in paragraph 11, the petitioner had made allegations of scandalous nature against a learned Judge of the City Civil Court. However, the said allegations made in paragraph 11 and synopsis were unconditionally withdrawn. In the affidavit dated 7th July, 2017 filed by the petitioner, in paragraph 3, the following statements have been made :-

- “3. I say that averments, statement and facts of previous writ petition bearing no.590/2013 are true and correct as stated from para no.(1) to para (29) of petition. Here copy of the said civil writ petition annexed as Exh. “A” with this affidavit. I say that all exhibits i.e. from Exhibit 'A' to 'Q' are the same as in present civil writ petition.”

(Underline supplied)

3 Thus, by filing the aforesaid affidavit, now the petitioner has come out with a case that all the averments made and the facts stated in paragraphs 1 to 29 in Writ Petition No.590 of 2013 are correct. This statement on oath has been made after unconditionally withdrawing the allegations in the synopsis as well as paragraph 11 of the earlier Petition. It is only in the light of the unconditional withdrawal of the allegations that instead of dismissing the earlier Petition, this Court permitted the petitioner to withdraw the earlier Writ Petition. Now, the petitioner wants to reiterate the correctness of the allegations which were unconditionally withdrawn. In the present Petition, in paragraph 11, the petitioner has alleged that he has not got justice from the City Civil Court. The petitioner seems to have relied upon the alleged “admission” of the learned Judge in paragraph 11. In paragraph 7, the petitioner has criticized the learned Judge for accepting the written statement of the Municipal Corporation after lapse of 9 years and has expressed a surprise how the written statement could be belated accepted.

4 In view of what is stated above, the petitioner should not be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India. The jurisdiction of this Court under Article 226 of

the Constitution of India is always discretionary and equitable. Considering the conduct of the petitioner which is reflected as above, we reject the Petition.

5 Perused the explanation submitted by the Master and Assistant Prothonotary dated 26th July, 2017. The explanation is accepted. No further action is called for in that behalf.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)