

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) No. 463 of 2016
IN
SUIT (L) NO. 637 OF 2016
WITH
NOTICE OF MOTION (L) NO.3552/2016
IN
APPEAL (L) NO. 463 OF 2016**

Ms. Swati Sakharam Paranjape ... Appellant.

Versus

Mr. Sachin Etam
and others ... Respondents

....

Mr. P.S. Dani, Senior Counsel i/b. Rajput K. Bhagatsingh for Appellant/Applicant.

Mr. Mihir & Govilkar i/b. Rajshekhar V. Govilkar for Respondent No.6.

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Joel Carlos, Mr. R.Y. Sirsikar for Respondent Nos. 2 and 3 MCGM.

Mr. Etam, Assistant Professor BMC.

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***CORAM : Smt. Vasanti A Naik &
Sarang V. Kotwal, JJ.***

DATE : 13th December, 2017.

P.C. :

By this intra court appeal, the order of the learned Single Judge, dated 12.07.2016 in the Suit (L) No.637/2016 is appealed against.

A preliminary objection is raised on behalf of the respondent No.1 to the tenability of the appeal. It is stated that the notice of motion as also the suit was disposed of with the consent of the learned counsel for the appellant and hence it would not be

permissible for the appellant to canvas that the learned Single Judge was not justified in disposing of the suit when the counsel had not consented for the same.

We uphold the preliminary objection on a reading of paragraph 7 and 11 of the order appealed against. In paragraph 7 of the order it is observed by the learned Single Judge that the counsel for the appellant-plaintiff is agreeable to an order on which the notice of motion was disposed of and in paragraph 11 of the order an observation is made that the counsel for the appellant had stated that the directions in paragraph 10 of the order appealed against would be sufficient to dispose of the suit as well as the notice of motion. Since the order disposing of the suit as well as the notice of motion appears to have been based on the statement made by the counsel for the appellant-plaintiff, if it is the case of the appellant that the counsel for the appellant had not made a statement that the suit could also be disposed of in view of the directions in paragraph 10 of the order, it would be necessary for the appellant to file appropriate proceedings before the learned Single Judge.

By upholding the preliminary objection raised on behalf of the respondents, we dispose of the appeal with no order as to costs. The points raised in the appeal are kept open.

With the disposal of the appeal, notice of motion (L) no.3552/2016 also stands disposed of.

(Sarang V. Kotwal, J)

(Smt.Vasanti A Naik, J)