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

WRIT PETITION NO. 3430 OF 2018

Rafiq Abdul Shaikh	...	Petitioner
V/s.		
Municipal Corporation of		
Greater Mumbai	...	Respondent.

Mr. R. A. Thorat i/by B. P. Shukla, Senior Advocate, for
the Petitioner.

Mr. Pradeep M. Patil, for the Respondent Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th MARCH, 2018.

P.C. :

1] Heard learned Senior Advocate for the petitioner and
learned counsel for the respondent.

2] By this petition, filed under Article 227 of the Constitution
of India, the petitioner is challenging the order dated 3rd February,
2018, passed by Ad-Hoc Judge, City Civil Court, Dindoshi, Mumbai,
thereby dismissing the Chamber Summons No.1216 of 2017 filed in
L.C. Suit No.3454 of 2016.

3] The said Chamber Summons was filed by the present
petitioner for amendment of the plaint under Order VI Rule 17 of Code
of Civil Procedure, in order to bring on record the subsequent fact like

receipt of the notice dated 21st April, 2017, issued under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short called as “MRTP Act”).

4] The said Chamber Summons was resisted by the respondent herein, by contending inter alia that the relevant Notice issued under Section 53(A) of the MRTP Act is not addressed to the petitioner. It is also not giving the same description of the suit property and it is nothing but an attempt on the part of the petitioner to prolong and protract the hearing of the suit that too by obtaining the order of Status-quo; and thereby to protect the illegal and unauthorized construction.

5] The trial Court accepted all these contentions raised by learned counsel for respondent and rejected the said Chamber Summons with the costs of Rs.1,000/- to be payable to the Legal Aid Committee.

6] While challenging the impugned order of the trial Court, the submission of learned Senior Advocate for the petitioner is that the trial Court has decided the the Chamber Summons on some erroneous assumptions or understanding of the facts. It is urged that merely because the Chamber Summons is filed by the C.A. of the petitioner herein, it cannot be rejected on that ground. It is urged that, as observed by the trial Court, even if there is some confusion

relating to the identification of the property, that cannot be a ground to reject the amendment, which is sought to bring on record the subsequent event for which the notice issued under Section 53 of the MRTP Act. According to learned counsel for the petitioner, the trial Court has not considered this application for amendment in proper perspective and proceeded on some erroneous grounds, and therefore the impugned order passed by the trial Court needs to be quashed and set aside.

7] Per contra, learned counsel for respondent has supported the said order by pointing out to the reasons given by the trial Court and to the fact that the Notice under Section 53(1) of the MRTP Act, is not issued to the petitioner. It also does not contain the description of the suit property and in such situation according to learned counsel for respondent there is misjoinder of causes of action and also misjoinder of parties, the said notice being issued by MMRDA.

8] The perusal of the impugned order of the trial Court, I find that no reason is made out to interfere in the said order. In the first place, admittedly notice under Section 53(1) of the MRTP is not at all issued to the petitioner.

9] The impugned notice is also not challenged by the petitioner himself, but by someone else, whose name is mentioned in the said Notice of Motion as Raeesuddin Moinuddin Shaikh, who

claims himself to be the C.A. of the petitioner, which this is without producing any Power of Attorney

10] Secondly, the description of the property as mentioned in the said notice, does not tally in any way with the description of the suit property as given in the plaint. The trial Court has properly considered that aspect by quoting the description and pointing out that it does not pertain to the suit property.

11] The trial Court has also considered that this Notice is not issued by Municipal Corporation, but by MMRDA and thus, now the petitioner wants to cause embarrassment to the respondent in defending of the suit, by bringing on record the facts which are not in any way shown to be connected with the dispute raised in the plaint.

12] Even though the trial Court has not stated in so many words, but the real reason given by the trial Court in rejecting the Chamber Summons for amendment is that it would be mis-joinder of the causes of action by bringing on record the facts which are not connected to the petitioner nor to the respondent. Hence the trial Court was perfectly justified in rejecting the said Chamber Summons, especially having regard to the fact that entire endeavour, as observed by the trial Court on the part of the petitioner appears to be to protract the hearing of the Notice of Motion, so as to retain the order of status quo to protect the structure, which according to

respondent, is illegal and unauthorized.

13] The impugned order, passed by the trial Court, therefore, being just, legal and correct, in writ jurisdiction no interference is warranted therein.

14] The Writ Petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]