

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14299 OF 2016

Islampur Municipal Council

..... Petitioner

VERSUS

Prakash Govind Vategaonkar & Ors.

..... Respondents

Mr. Rupesh K. Bobade for the Petitioner.

Mr. Ramdas A. Shelke for the Respondent nos. 1 to 5.

CORAM : R.D. DHANUKA, J.

DATE : 8th OCTOBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner (original defendant) has impugned the order dated 28th July, 2016 rejecting the application (Ex.38) filed by the petitioner *inter alia* praying for withdrawal of the notice dated 1st March, 2016 on the ground that the said notice prescribed two days period for taking action against the original plaintiff. The learned trial judge has rejected the said application on the ground that there is no provision for withdrawal of such notice for rectifying the mistake.

2. In my view, even if trial court would have decreed the suit on the ground that the notice was defective, Municipal Council could not be prevented from initiating a fresh action after complying with the provisions of law.

3. The impugned order dated 28th July, 2016 is accordingly set aside.

4. The petitioner would be at liberty to issue a fresh notice for the same cause of action for which the notice dated 1st March, 2016 was issued by the petitioner.

5. The interim relief granted by the trial court in the Regular Civil Suit No.161 of 2016 to continue for a period of two weeks from the date of receipt of any fresh notice as may be received by the petitioner to enable the respondents to challenge the said notice in accordance with law.

6. It is made clear that this court has not expressed any views on the merits of the notice issued by the petitioner or the subject matter of the suit.

7. Writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

[R.D. DHANUKA, J.]

Kanchan
Vinod
Mayekar

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