

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 581 OF 2018

Aamir Abdul Mannan Gazdar
And Anr.

...Petitioners

Versus

Khadija Tar Mohammed Sonarkar
And Ors.

...Respondents

....

Ms. Eventa A. Gonsalves, Advocate for the Petitioners.

Mr. N.A. Ghatte i/b. N.R. Bubna, Advocate for Respondents No.1, 3, 6 and 7.

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CORAM : R. G. KETKAR, J.

DATE : 11th JUNE, 2018

P.C.

1. Heard Ms.Eventa Gonsalves, learned counsel for the petitioners and Mr.N.A. Ghatte, learned counsel for respondents No.1, 3, 6 and 7, at length. On the oral application made by Ms. Gonsalves, leave to delete rest of the respondents is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the order dated 22.6.2016 passed by the learned Judge, Court Room No.13 of Court of Small Causes at Mumbai in R.A.E. & R. Suit

No.1728/2009. Ms. Gonsalves has restricted her challenge in respect of documents at Sr. Nos. 7 to 9. She submitted that the documents at Sr. Nos.7 & 8 are the photo-copies of the applications moved by one Abdul Basit Ataur under Right to Information Act, 2005. Documents at Sr. No.9 are true-copies issued by the Public Information Officer (for short, 'PIO') of the Mumbai Municipal Corporation (for short, 'Corporation') to Abdul Basit Ataur.

3. The learned trial Judge has rejected the application principally on the ground that in the plaint the plaintiffs did not refer these documents issued by PIO in favour of Abdul Basit Ataur or that the plaintiffs did not plead that he is related to them. The learned trial Judge observed that though the documents issued by PIO are admissible, however, it should be filed by parties with a relevancy to call such information. Accordingly, documents at Sr. Nos.7 to 9 were marked as Articles X-3 to X-5.

4. Ms. Gonsalves submitted that the suit is instituted in the year 2009 and the documents in question are received under Right to Information Act in the year 2012 and, therefore, there was no question of referring to these documents as also pleading relation of Abdul Basit Ataur with the plaintiffs. She submitted that she will summon either

officer attached to the Corporation or Abdul Basit Aatur to prove the relevancy and contents of the documents at Articles X-3 to X-5.

5. On the other hand, Mr. Ghatte supported the impugned order. He reiterated the submissions advanced before the trial Court. He submitted that basically the plaintiffs have not referred to these documents in the suit as also did not plead about relation of the plaintiffs with Abdul Basit Aatur. The learned trial Judge was, therefore, justified in marking these documents as Articles. He submitted that the plaintiffs may be given liberty to adopt appropriate procedure for proving the contents of these documents.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. While marking the documents as Articles, the learned trial Judge specifically observed that the documents issued by PIO are admissible. However, these documents were marked as Articles on the ground that it should have been filed by the parties with a relevancy to call such information. It is no doubt true that Abdul Basit Aatur is not a party to the suit. The learned trial Judge was, therefore, justified to the extent of observing that information supplied by PIO to Abdul Basit Aatur cannot be accepted as relevant for the suit. Nonetheless this will not preclude the plaintiffs to prove the relevancy

as also contents of the documents either by examining officer from the Corporation who had issued the documents under Right to Information Act or Abdul Basit Aatur. Subject to this clarification, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

7. It is made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)