

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6486 OF 2019

Dashrath M.Yadav	.. Petitioner
Vs.	
The Municipal Corporation of Greater Mumbai and ors.	.. Respondents

Mr.R.M.Pandey, for the Petitioner.
Mr.Vinod Mahadik, for Respondent No.1.
Mr.Madhusoodan Nair i/b KPMC Legal, for the Respondent
No.5.

CORAM : M.S.KARNIK, J.

DATE :05th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner and learned
Counsel for the respondents.

2. The order challenged in this Petition is passed by the
Mumbai City Civil Court in Notice of Motion No. 4516 of 2018
rejecting the Notice of Motion. By the said Notice of Motion, the
plaintiff sought to recall the evidence close pursis and for grant

of permission to examine one witness.

3. It is a matter of record that the plaintiff closed his evidence by filing pursis. Thereafter even defendants led their evidence and closed their evidence. The matter was fixed at the stage of final hearing.

4. The plaintiff filed the Suit for declaration that the approval of the plan dated 17/05/2006 and issuance of IOD dated 17/05/2006 and C.C. for the development of the land in question is illegal and bad in law. The plaintiff has sought relief of cancellation of the approved plan.

5. After the evidence of the defendants was over, at the stage of final argument, the present Notice of Motion was filed for examining the Executive Engineer (Building Proposal MCGM), Kandivali, as a witness. It is the plaintiff's case that he remained to be examined by mistake. According to learned Counsel as in the Suit, sanctioned plan and issuance of IOD is

challenged, it is necessary to examine the witness.

6. Learned Counsel for the petitioner pointed out that great prejudice will be caused to the petitioner - plaintiff if Executive Engineer is not allowed to be examined on behalf of the plaintiff to prove the documents. He further pointed out that there was some difficulty on the part of the plaintiff and therefore his son had to step into witness box to depose on behalf of the plaintiff as his witness. There were some facts which came to his knowledge later on and hence application filed for recalling the evidence close pursis is bonafide.

7. Learned Counsel for the respondents on the other hand would support the order passed by the trial Court. He would submit that every stage, the trial has been protracted by plaintiff and even after evidence is closed, plaintiff wants one witness of the Corporation to be examined.

8. I have gone through the order passed by the trial

Court. The Suit is of year 2007. The witness sought to be examined is an Officer of the Corporation. All the documents i.e. sanctioned plan, IOD would obviously be in possession of the plaintiff. In my opinion, if in these circumstances the trial Court has rejected the application for recalling the evidence close pursis and refused permission to examine Executive Engineer of the Corporation as a witness that too when the defendant has led evidence and the Suit is for final arguments, I see no reason to interfere with the trial Courts order. Petition stands rejected with no order as to costs.

(M.S.KARNIK, J.)