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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6506 OF 2019

Prakash Devji More

...Petitioner

vs

Smt. Komal Kamlakar Jamsandekar And Ors.

...Respondents

.....

Mr. Bharat Joshi, a/w. C.K. Bhangoji, i/b. R.K. Mendadkar, for the
Petitioner.

Mr. N.P. Dalvi, for Respondent No.1.

Ms. Madhuri More, for Respondent No.2- MCGM.

.....

CORAM : S.C. GUPTE, J.

DATED: 7 OCTOBER, 2019

P.C.:

. This writ petition challenges an order passed by the Court of Small Causes at Mumbai in an election petition. The order has been passed on an application made by Respondent No.1, who is the main contesting Respondent to the election petition, under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the election petition. It is mainly contended by the Petitioner herein that the grounds of challenge to his objection in the election petition do not fall in the category of corrupt practice contemplated under Section 28F of the Municipal Corporation Act, 1888. The application was rejected by the Court on the ground that considering the application at this stage would result into delay in disposing of the election petition. The Court rejected the

application with costs. After the matter is heard at some length, it is agreed between learned Counsel for the parties that the impugned order dated 24 April 2019 may be quashed and set aside and the application, being Exhibit-50, be remanded to the trial court for a fresh hearing in accordance with law.

2. The impugned order dated 24 March 2019 is, accordingly, quashed and set aside and Exhibit-50 is remanded to the Small Causes Court for a fresh hearing in accordance with law. It is made clear that the Small Causes Court should decide the application below Exhibit-50 on its own merits, since the issue raised in the application goes to the root of the matter.

2. All rights and contentions of the parties on merits in that behalf are kept open.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2019.10.15
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(S.C. GUPTE, J.)