

9.8.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9005 OF 2014

Shri. Vinay Kumar Prem

Pyarelal Sadh

.....Petitioner

V/s.

Gheesulal Dudhaji Choudhary

and anr.

....Respondents

Mr. Vinod S. Pandey i/by. Mr. S.U. Pandey, Advocate
for the petitioner.

Mr. Ajay L. Yadav, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Friday, 9th August, 2019.

P.C. :

1. The petition was called out at 11.00 a.m.
and at the request it was kept back and called out at
12. p.m.

2. Perused the petition. Heard learned Counsel

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for the parties.

3. The petitioner is the defendant no.2 in Long Cause Suit No. 469 of 2008 instituted by respondent no.1 herein inter-alia challenging the notice issued by the Municipal Corporation of Greater Mumbai. He was served with the writ of summons on 16th June, 2011 and thereafter advocate for the plaintiff supplied copies of the plaint to the advocate for the petitioner on 5th April, 2013. That since petitioner-defendant no.2 did not file the written statement, the trial court was pleased to pass "No W.S." order on 29th August, 2011. Two years later, he took out a Notice of Motion No. 2069 of 2013 and requested the Court to recall the "No W.S." order. The trial Court by well reasoned order, declined to recall the "No W.S." Order and Motion was dismissed on 20th June, 2014. This order is under challenge before this Court under Article 227 of the

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Constitution of India. The petition was filed on September, 2014.

4. The learned Counsel for the respondent, supports the impugned order. He submits that the trial is at the fag end and therefore no interference is called for.

5. Upon consideration of the facts of the case, I do not see any reason to interfere with the order, in as much as, the reasons put forth for setting aside the "No W.S." order, that the petitioner could not file the Written Statement due to financial constraints has been rightly rejected by the learned trial Judge. In view of this, there is no substance in the petition. The petition is dismissed.

(SANDEEP K. SHINDE, J)