

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.556 OF 2016

Suhas Narayan Lande ...Appellant
V/s.
Pimpri Chinchwad Municipal Corporation ...Respondent
....
Shri S. A. Sawant, advocate for the appellant.
Shri G. H. Keluskar, advocate for the respondent.

....

CORAM : M.S.KARNIK, J.

DATE : 17th JUNE, 2019

P.C. :

1. Heard the learned counsel for the appellant.
2. The appellant was removed from the services of the respondent/Corporation by an order dtd.10/12/2003. Departmental inquiry was conducted against the appellant wherein he was found guilty of driving the ambulance in rash and negligent manner and under the influence of liquor.
3. The appellant court was of the opinion that the civil court has no jurisdiction to try and decide the suit, as the appellant has ample remedies under the Labour Law and the provisions of the BPMC Act.

4. Faced with this difficulty, learned counsel for the appellant on instructions submits that appellant would approach the appropriate forum for redressal of his grievances. He would however submit that he has been bonafide pursuing a wrong remedy since the year 2007. He would further submit that if at all appellant is succeeds, it will now be a question of his retirement dues as he is 75 years of age as on today.

5. In this view of the matter, in my opinion, the following order would meet the ends of justice :-

(i) The appellant is allowed to withdraw the appeal with a liberty to approach the competent court to invoke the remedy which may be available to him in law or any other remedy under the Bombay Provincial Municipal Corporations Act, 1949.

(ii) As the appellant was bonafide pursuing the suit since 2007, period spent in pursuing this remedy till the withdrawal of this appeal be sympathetically considered while considering

the application for condonation of delay.

(iii) As the first appellate court has come to the conclusion that the civil court has no jurisdiction to try and entertain the suit, all contentions are kept open to be decided by the competent forum without being influenced by any of the observations made by the trial court as well as the appellate court.

6. The appellant is 75 years of age. Learned counsel for the appellant requested that direction be issued for expediting the proceeding which the appellant may file in challenge to the order of dismissal. Such a direction at this stage cannot be given. In any case, the fact that the appellant is a senior citizen will undoubtedly weigh in the mind of the concerned court while dealing with the matter if the same is to be expedited.

7. With these observations, the appeal is allowed to be withdrawn and is disposed of accordingly.

(M.S.KARNIK, J.)