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

WRIT PETITION NO. 5065 OF 2019

Nandkumar Shankarrao Ghorpade ..Petitioner

vs.

Suresh Baburao Chavan ..Respondent

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Shri V.R. Gaikwad for the petitioner.

None for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 1st OCTOBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The order impugned by this Petition is passed below Exhibit 103 in Regular Civil Suit No. 501 of 2016. The plaintiff – present respondent filed a suit for injunction restraining the defendant from interfering with his peaceful possession in the suit premises. The plaintiff is the tenant of the suit premises. The defendant is the landlord. It is the contention of the plaintiff that he is residing in the suit premises and paying rent. The suit proceeds on the premise that the defendant called upon the plaintiff to vacate the suit premises and threatened eviction.

3. The petitioner – original defendant filed a detailed written statement. In the written statement it is the specific case of the defendant that the plaintiff is not residing in the suit premises and in fact his residence and office is at some other place from where he is carrying out his activities. It is further case in the written statement that the building is old and is in dilapidated condition and not fit for commercial use. By way of filing the application below Exhibit 103 the defendant wanted to amend the written statement. It is the case of the defendant that on 5/3/2018 the Municipal Corporation of Greater Mumbai issued a notice to him for demolition as the same is in dilapidated condition. The defendant therefore wanted to amend the written statement for bringing the subsequent events in the form of issuance of the notice by the Municipal Corporation on record. The trial Court rejected the application.

4. Learned counsel for the petitioner – original defendant would submit that it is necessary to bring on record the notice issued by the Municipal Corporation to establish the

factum of the building being in a dilapidated condition. He would rely upon the decision of the Hon'ble Supreme Court in the case of **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran & ors.** reported in **2017 (4) Mh.L.J. 809** to submit that unless the defendant pleads the factum of the building being in a dilapidated condition, he will not be able to lead the evidence.

5. I have gone through the written statement filed by the defendant. The written statement is very elaborate. In the written statement specific plea is taken by the defendant that the building is old and in dilapidated condition. Further plea is taken that the plaintiff is not residing in the suit premises and that the premises is not fit for commercial use.

6. In this view of the matter, if the trial Court rejected the application for amendment of the written statement which was only to bring on record the subsequent notice issued by the Corporation to the defendant for demolition of the said building, in my opinion, this order cannot be faulted with. There is

already a plea on record as regards the building being in a dilapidated condition. The evidence as to the building being in a dilapidated condition can always be led by the defendant. The impugned order does not call for any interference.

7. The Petition is dismissed with no order as to costs.

(M.S.KARNIK, J.)

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