

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1556 OF 2022

Smt. Nanda D/o Kanhaiyalal Rathod
Age: 55 years Occ. Business,
R/o Hotel Nanda deep Jalgaon Road,
Harsool Tq. And Dist. Aurangabad.

... Petitioner

Versus

Municipal Corporation Aurangabad
Having its Office at
Town Hall, Aurangabad
Through its Commissioner

... Respondent

...

Advocate for Petitioner : Mr. N. S. Muthiyan
Advocate for Respondent : Mr. Anand P. Bhandari

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE :

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 11-01-2022, passed by the learned Civil Judge Senior Division, (MCA Court) Aurangabad, below Exhibit-83 in R.C.S. No.127/2016, thereby rejecting the application of the petitioner plaintiff for exhibition of documents produced along with the list Exhibit-73 and for evidence. The petitioner also impugns the order passed below Exhibit-84, whereby the petitioner

prayed for setting aside the order passed below Exhibit-28 and for fixing the matter for final arguments.

3. The petitioner/plaintiff has filed the suit for perpetual injunction restraining the defendant from causing obstruction and interference in the peaceful possession of the suit property of the plaintiff and from demolishing the structure of Hotel premises of the plaintiff as described in the prayer clause of the plaint, by declaring that the notice issued by the defendant dated 05-12-2016 is illegal, null and void. The defendant respondent appeared and resisted the suit of the petitioner by filing written statement. The petitioner/plaintiff by filing pursis closed evidence on 27-08-2021 and the suit was closed for judgment as the parties failed to argue the matter finally. At this stage, the application Exhibit-83 is filed by the petitioner for exhibition of the notice reply of the petitioner dated 21-10-2015 (office copy) and two news items reported in the daily newspaper on 23-11-2015 and 19-02-2017, in respect of removal of encroachment. The trial Court has rejected the said application on the ground that the matter is fixed for judgment and the application cannot be entertained as the same is filed for filling of lacuna and to prolong the case.

4. Heard the rival submissions of the respective parties.

5. Perusal of the record indicates that the notice reply of the petitioner dated 23-10-2015 is referred to in the pleadings of the petitioner in the plaint and the same is also admitted by the respondent defendant in the written statement. The petitioner has, in the affidavit filed in lieu of examination-in-chief, referred to this reply and prayed for exhibition of the same. The learned advocate for respondent opposed exhibition of the notice reply contending that the date of notice reply is given differently at different places. It is mentioned as '23-10-2015' in the plaint, whereas in the list of documents it is mentioned as '21-10-2015'.

6. Perusal of the notice reply shows that the date mentioned at the top is '21-10-2015' and the same is received by the respondent on 23-10-2015. As the notice reply is already admitted by the respondent in the written statement and as it is referred by the petitioner in the evidence, the same can be exhibited and read in evidence.

7. As far as the two news items are concerned, those are not seriously disputed by the learned advocate for respondent and therefore, they can be exhibited and taken into consideration while deciding the dispute between the parties. The trial Court has granted permission to the petitioner to file written notes of arguments. In the interest of justice

and with a view to give fair opportunity of hearing to the parties, apart from filing the written notes of arguments the parties are permitted to argue the matter finally before the trial Court.

8. In the result, the impugned orders are quashed and set aside. The trial Court is directed to exhibit the documents and consider the admissibility of the same at the time of final decision of the suit. Parties to appear and argue the matter finally before the trial Court on 28-03-2022. The trial Court shall decide the matter within a period of four weeks thereafter. Writ petition is accordingly disposed off.

9. Rule is made absolute in the above terms with cost of Rs.5,000/- to be paid by the petitioner plaintiff to the respondent defendant before the trial Court.

(NITIN B. SURYAWANSHI, J.)