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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1713 OF 2022

IRFAN GULAM AHMED DHORAJIWALA

....PETITIONER

V/s.

MUNICIPAL CORPORATION OF GREATER MUMBAI AND ANRRESPONDENTS

Mr. Amrut Joshi i/b Mr. Sanket M. Mungale Advocate for the Petitioner

Mr. Dharmesh Vyas a/w Om Suryavanshi for Respondent MCGM

Mrs. Madhubala Kajle AGP for Respondent no. 3

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022.

P.C.:

1) In a Suit for declaration, vide impugned order, the Court below has directed deletion of Defendant no. 3.

2) Submissions of learned counsel for the Petitioner-Plaintiff are, Defendant no. 3 is appropriate party to the Suit so as to establish the claim made in the Suit. According to him, Petitioner-Plaintiff is *dominus litis* and that being so, the choice is with him to whom to be

added. He would claim that Suit claim is based on certain documents which are issued by Defendant no. 3 and that being so, said party i.e. Defendant no. 3 is an appropriate party to the Suit. According to him, the Court below has committed an error of jurisdiction in issuing direction of deletion of Defendant no. 3 on its own motion.

3) Learned counsel for Respondent would support the order.

4) I have perused the impugned order. The Trial Court has applied the test as to whether the Suit claim can be decided in absence of Defendant no. 3. On perusal of pleadings in the Plaint and the findings recorded in the impugned order, it is quite apparent that Suit claim can be effectively decided in absence of Defendant no. 3 as the Plaintiff has not sought any relief against said Defendant. As such, Defendant is neither a proper nor appropriate party to the Suit. Petitioner's right is already protected by the Court below as it is observed that if so required, said Defendant can be summoned as witness so as to establish the documents which the Petitioner intends to rely on so as to establish relief claimed against Respondent-Corporation.

5) This Court is required to be sensitive to the fact that Suit claim

is in relation to challenge to notice issued under Section 351 of Mumbai Municipal Corporation Act. That being so, no case for interference in extraordinary jurisdiction of this Court is made out.

6) Petition stands dismissed.

[NITIN W. SAMBRE, J.]