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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3671 OF 2022**

UMA MANORANJAN AMERSEY

.... Petitioner.

V/s

MUNICIPAL CORPORATION OF
GREATER MUMBAI AND ANR.

.... Respondents.

Mr. Vishal Kanade a/w Bharat Jain i/b Economic Laws Practice for the
Petitioner.

Mr. Santosh Parad for Respondent No.1/MCGM

Mr Archit Jayakar a/w Jasmeet Kaur i/b Jayakar & Partners for
Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 06, 2022

P.C.:-

1] Respondent No.1 – Municipal Corporation served notice on
Respondent No.2 under Section 351 of the Mumbai Municipal
Corporation Act, 1888, which is a subject matter of challenge in L.C.
Suit No.834 of 2012. On 5th April, 2017, Respondent No.2/Plaintiff
was permitted to amend the suit. Trial in the suit is yet to commence.
However, Petitioner's prayer for permission to place on record Written
Statement came to be rejected by the order impugned. As such, this
Petition.

2] I have heard respective Counsel.

3] Notice of Motion No.611 of 2020 was taken out by the Petitioner, claiming that delay caused was unintentional as the Petitioner was aware of pendency of amendment application which was granted in 2017. Mr. Kanade, learned Counsel for the Petitioner would urge that after grant of amendment, Petitioner took some time to verify the facts so as to enter Written Statement on record. As such, delay is caused. According to him, trial in the suit is yet to commence.

4] The prayer is objected by Counsel for the Respondent No.2/Plaintiff, as according to him, there is no convincing reason coming forth as regards explaining delay from 10th April 2012 till the date of tendering of the Written Statement i.e. in 2020. According to him, even if trial in the suit is not commenced, there is absence of due diligence on the part of the Petitioner and that being so, Petition is liable to be dismissed.

5] Considered submissions.

6] It appears that the suit is initiated by Respondent No.2/Plaintiff against the Corporation, so also the present Petitioner as the Corporation has issued notice under Section 351 of the said Act for demolition of the illegal structure.

7] The Petitioner appears to be the cause for issuance of such notice as it is alleged that Petitioner has filed complaint against the Respondent No.2/Plaintiff.

8] Even though the suit is pending since 2012, I am informed that trial in the suit is not yet commenced. Amendment to the Plaint was allowed on 5th April, 2017 and as such the Petitioner was entitled to carry out consequential amendment to the Written Statement or Written Statement in response to the amendment granted.

9] In the aforesaid backdrop, even if there is delay on the part of the Petitioner, in my opinion, subject to imposing reasonable condition, the Petitioner can be allowed to place on record her Written

Statement so as to enable her to contest the suit on merit.

10] As such, subject to payment of costs of Rs 50,000/- to be paid by the Petitioner to Respondent No.2/Plaintiff within four weeks from today, Written Statement of Defendant No.2 be taken on record. If the costs is not paid or Written Statement is not tendered, Court below will proceed with the suit as if suit has to be proceeded without Written Statement.

11] Petition stands partly allowed in the aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)