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

WRIT PETITION 3049 OF 2013

M/s. Jairaj Developers ... Petitioner
Versus
Pune Municipal Corporation and Ors. ... Respondents

Mr. G. S. Godbole a/w Drupad S. Patil for the Petitioner.
Mr. Abhijit P. Kulkarni for the Respondent 1.

CORAM: ROHIT B. DEO, J.
DATE : 16th JUNE, 2022

P.C. :-

1. The petitioner is original defendant 2 in Special Civil Suit 579 of 2012 and exception is taken to the order passed in the month of April 2012 rendered by the learned Trial Court below exhibit 29, whereby the application preferred by defendant 2 seeking deletion of defendants 1, 1A and 1B from the array of defendants, is rejected.

2. The application exhibit 29 was preferred, *inter-alia* on the premise that the defendants 1, 1A and 1B are neither necessary or proper parties to the suit.

3. It would not be necessary to delve deeper in the reasons articulated by the learned Trial Court while rejecting the application. The learned counsel for the petitioner Mr. Godbole, would submit that the defendant 2 shall withdraw the application exhibit 29 itself and that

the learned Trial Judge may be directed to frame an issue as to whether the defendants 1, 1A and 1B are necessary or proper parties, which may be answered along with the other issues arising in this suit.

4. While the learned counsel for the contesting respondent-plaintiff is opposing the prayer, I am inclined to accept the submission of Mr. Godbole. Even otherwise, looking at the nature of the controversy and the reasons put-forth by the defendants in support of their case that the defendants 1, 1A and 1B are not necessary or proper parties, it would only be appropriate if the said issue is determined after the evidence is adduced.

5. The application exhibit 29 is dismissed as withdrawn.

6. The learned Trial Court shall frame an appropriate issue consistent with the observations supra, which shall be decided along with the other issues, uninfluenced by any observations in the order impugned whereby application exhibit 29 is rejected, which order obviously does not survive in view of withdrawal of the application exhibit 29 itself.

7. The petition is disposed of.

[ROHIT B. DEO, J.]