

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6440 OF 2017

Shri. Mohan Vinayak Malwadkar

and anr.

...Petitioners

V/s.

Municipal Corporation of City

of Solapur and Ors.

....Respondents

* * * *

Mr. Surel S. Shah, Advocate for the petitioners.

Mr. Ashutosh M. Kulkarni, Advocate for respondent no.3.

Mr. Mahindra B. Deshmukh, Advocate for respondent no.1
and 2.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 25th August, 2022.

P.C. :

1. Leave to annex copy of the order dated 4th May, 2017. Amendment to be carried out forthwith.

2. Heard learned Counsel for the parties.

3. In Regular Civil Suit No. 1030/2002, instituted by the petitioners-plaintiffs, the learned trial Court on 29th October, 2002 directed the parties to maintain the status-quo till filing of the say; whereafter on 30th November, 2002 order of status-quo was continued till Exhibit-5 was heard. On 7th February, 2004 the plaintiff requested the trial Court to hear Exhibit-5 alongwith the suit. The trial Court passed the order; "Read and Recorded". This order created confusion-as to whether the order of status-quo was continued or not. The interpretation of the order to "Read and Recorded", occasioned to bring out application at Exhibits-42, 43 and 45 filed by the plaintiffs and the defendants. One of such applications was, under Order 39 Rule 2A of the Civil Procedure Code. It appears, defendant no.3 vide application at Exhibit-54, requested to conduct hearing of application, at Exhibits-42, 43 and 45 separately. The learned trial Court vide order dated 4th May, 2017 directed the parties to argue the application below Exhibit-42 moved by the defendant

no.3. Feeling aggrieved by the said order, plaintiffs have preferred this petition.

4. Upon perusing the impugned order, in my view, it would be appropriate, if the trial Court endeavours to decide the Exhibit-5 application of the plaintiffs, on it's own merits and decide the same preferably before 21st October 2022, after hearing the parties to the suit.

5. It is clarified, this Court has neither examined the correctness and legality of the orders dated 29th October, 2002; 30th November, 2002 and 5th February, 2004 passed by the trial Court, nor dealt with application below Exhibit-43.

6. All contentions of the respective parties, are kept open.

7. In the consequence of this order, impugned order dated 4th May, 2017 is quashed and set aside.

8. Petition is disposed of.

(SANDEEP K. SHINDE, J.)