

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

WRIT PETITION NO.3209 OF 2022

Modilal Bapna and Anr.	 Petitioners
Vs.	
The Municipal Corporation of Gr. Mumbai	Respondent

Mr. Rahul Kedar i/by Ms. Riddhi B. Wagle for the Petitioners.
Mr. Om Suryawanshi for the Respondent/MCGM.

CORAM: SANDEEP K. SHINDE, J.

DATED : SEPTEMBER 13, 2022

P.C.

1. Order dated 9th August, 2021 dismissing the Notice of Motion No.523 of 2018 with cost of Rs.2,000/- is under challenge.

2. Facts essential for the decision of this Petition are as under;

. Petitioners/Plaintiffs challenged legality and validity of the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 by filing Long Cause Suit No.1914 of 2014. Pending suit, trial Court refused certain ad-interim reliefs. Whereafter, in Appeal From Order (Stamp) No.21925 of 2014, this Court vide order dated 11th September, 2015 granted ad-interim relief and disposed of the Appeal From Order.

Petitioners' case is that after expiry of almost two years, defendant-Corporation orally requested the trial Court to allow them to file their affidavit-in-reply to Notice of Motion and accordingly, it was filed on 11th August, 2016. Thereafter, plaintiffs had filed affidavit-in-rejoinder, to the same. Notice of Motion was partly argued and was listed before the Trial Court on 26th October, 2017. On that day, board was discharged and proceedings were adjourned to 21st December, 2017. Petitioners' case is that on 24th November, 2017, the Corporation sought production of proceedings before the Trial Court, by moving praecipe but without notice and filed additional reply to the Notice of Motion. Feeling aggrieved by the order, allowing Corporation to file additional reply to the Notice of Motion, Petitioners filed another Notice of Motion No.523 of 2018 seeking two reliefs; to set aside ex-parte roznama dated 24th November, 2017 and to discard the additional affidavit-in-reply filed by the defendant/Municipal Corporation of Greater Mumbai. The learned Trial Court dismissed the Motion vide order dated 9th August, 2021 and imposed the cost of Rs.2,000/-.

3. No doubt, the Trial Court before allowing Corporation to file additional affidavit-in-reply to the Notice of Motion, ought

to have assured that due notice was given to the plaintiffs. However, It appears from the roznama, that neither the Trial Court directed Corporation to give notice to the plaintiffs nor does it indicate that the Corporation made any efforts or tried to serve the plaintiffs, before seeking production of proceedings on 24th November, 2017. Therefore, there were some irregularities, in the proceedings. However, at the same time, Trial Court has not passed any order causing prejudice to the interest of the plaintiffs. In spite of this fact, the Petitioners have taken out another Notice of Motion seeking relief to discard the additional affidavit-in-reply filed by the defendant-Municipal Corporation of Greater Mumbai.

4. In consideration of the facts of the case, I am unable to understand as to how the filing of the additional affidavit-in-reply has prejudiced the interest of the plaintiffs and/or affected their rights. Therefore, proceedings taken out by the plaintiffs were not only pointless or inconsequential, but it is clearly visible that these proceedings were taken out with sole intention to prolong the trial and to ensure that the ad-interim relief granted by this Court is continued. It could be seen that the plaintiffs successfully dragged the hearing of the Notice of Motion nearly

for seven years. Hon'ble Supreme Court, has held that "Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources, which should be deployed in the handling of genuine causes are dissipated in attending the cases filed to benefit from delay, prolonging dead issues and pursuing worthless causes." Thus, it is to be held proceedings taken out by the plaintiffs were for pursuing worthless cause, in-as-much as alleged irregularity in taking additional affidavit in reply of the Corporation on record in no way has affected Plaintiffs' right to pursue suit. In that view of the matter, Writ Petition is dismissed with cost of Rs.25,000/-. The Petitioners shall deposit the cost with Kirtikar Law Library, High Court, Bombay within a week from uploading this order on the web-site of this Court. Having regard to the facts of the case, the learned Trial Court shall dispose of all the pending Motions in the Long Cause Suit No.1914 of 2014 on or before 11th November, 2022. If the Petitioners fail to deposit the cost, same shall be recovered from them as arrears of land revenue. Petition is dismissed.

(SANDEEP K. SHINDE J.)