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

WRIT PETITION NO.663 OF 2016

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Hari Shridhar Athawale

... Petitioner

V/s.

Pune Municipal Corporation & Anr.

... Respondents

Mr. Siddharth C. Wakankar for the petitioner.

Mr. Rajdeep S. Khadapkar for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 30, 2023

P.C.:

1. The petitioner/original plaintiff is challenging orders dated 5 January 2015 and 9 December 2015 passed by the Trial Court rejected petitioner's application seeking permission to lead further evidence.

2. The petitioner filed Regular Civil Suit No.1194 of 2005 challenging notice issued purportedly under Section 258 of the Bombay Provincial Municipal Corporation Act, 1949 read with Section 51 of the Maharashtra Regional and Town Planning Act, 1966 revoking commencement certificate and suspending completion certificate. According to the petitioner, the defendant/ Corporation sanctioned plan on 16 October 1995. However, on a complaint filed by the adjoining owner, notice purportedly under

Section 258 of the Bombay Provincial Municipal Corporation Act, 1949 was issued.

3. The Corporation contested the suit by filing written statement. According to the Corporation, the plaintiff suppressed pendency of suit filed by the tenant and permission was obtained by misrepresentation.

4. The petitioner initially filed affidavit in lieu of examination-in-chief. The respondent cross-examined the petitioner. However, according to the petitioner he received documents having vital importance and, therefore, prayed for recall of 'evidence closed' order passed against the petitioner.

5. The Trial Court by the impugned order rejected the application holding that the petitioner failed to lead further evidence on earlier occasions. The suit was filed in the year 2005 and the plaintiff being negligent is not entitled to lead further evidence.

6. The petitioner also filed an application below Exhibit-91 seeking permission to produce documents. The Trial Court rejected the application.

7. On perusal of the impugned orders, it appears that the controversy involved in the suit is as to whether the notice issued by the Municipal Corporation and the action of revocation of commencement certificate on the ground of misrepresentation would be illegal. The burden is obviously on the plaintiff. Therefore, considering the nature of dispute, it would be in the interest of justice that the plaintiff be given opportunity to lead

relevant evidence in support of his case. However, since the plaintiff intends to lead further evidence, the Municipal Corporation deserves to be given opportunity to meet the evidence adduced by the plaintiff by way of cross-examination, and if required by leading their evidence.

8. The petitioner being plaintiff no prejudice would be caused to the defendant if the petitioner is permitted to lead further evidence.

9. Learned advocate for the Municipal Corporation placed reliance on the judgment of the Apex Court in **Madanlal v. Shyamlal** reported in (2002) 1 SC 535. The Apex Court in the said case was considering validity of an order rejecting prayer of the plaintiff to produce documents on record. In the context of said fact, the Apex Court observed that in the facts of the case, cause shown by the appellant was not a good cause as contemplated under Order 13 Rule 1 of the Code of Civil Procedure, 1908.

10. In the facts of the present case, considering the nature of rights involved, and in particular the construction carried on by the plaintiff, in my opinion, the plaintiff needs to be given opportunity to adduce admissible evidence in support of his case. Hence, following order:

- a) The impugned orders dated 5 January 2015 and 9 December 2015 passed on applications below Exhibits 88, 90 and 97 are quashed and set aside;
- b) Applications below Exhibits 88, 90 and 97 are allowed;

c) The petitioner is permitted to lead further evidence. The respondent/Corporation shall be entitled to cross-examine the plaintiff, and if necessary the Municipal Corporation is permitted to lead evidence.

d) Considering that the suit is pending since 2005, the Trial Court shall decide the suit within six months from today.

11. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)