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

WRIT PETITION NO.12860 OF 2023

Fazloo Rehman Kazi

... Petitioner

V/s.

Municipal Corporation of Greater
Bombay

... Respondent

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Mr. Abhishek L Tripathi, for petitioner.

Mr. Santosh Parad, for respondent (MCGM).

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 16, 2023

P.C.:

1. By the impugned order the City Civil Court, Greater Bombay rejected application for amendment of plaint filed after the suit was fixed for arguments.
2. The petitioner is original plaintiff who filed Long Cause Suit No.70 of 2013 seeking relief of injunction against the Municipal Corporation, Greater Mumbai from demolition of suit structure without following due process of law.
3. According to the petitioner, on 16 January 2020 defendant put up wire fencing in front of suit premises thereby obstructing egress and ingress of the plaintiff and, therefore, relief of mandatory injunction against the Municipal Corporation to remove wire fencing is sought.

4. It needs to be noted that the relief sought by plaintiff is in relation to legality of suit structure. Inquiry in such suit is restricted about the legality of suit structure. Only question which the Trial Court needs to inquire into in such suit is whether such suit structure was constructed after permission of the Planing Authority or is tolerable structure as per the relevant guidelines. The installation of wire fence by the Corporation is independent cause of action is for removal of such fence, plaintiff needs to prove his right over the land. Right over the land is not subject matter of the suit; therefore, the Trial Court was justified in rejecting the application at the stage of arguments on the ground that it constitutes fresh cause of action arose to the plaintiff.

5. The writ petition is, therefore, rejected. No costs.

(AMIT BORKAR, J.)