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

WRIT PETITION NO.10120 OF 2023

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Akaash Impes, through partner ... Petitioner

V/s.

The Municipal Corporation of
Greater Mumbai, through
Assistant Municipal Commissioner ... Respondent

Mr. Anil Sakhare, Senior Advocate i/by Mr. R.S.
Mirpury for the petitioner.

Mr. R.Y. Sirsikar for the respondent/MCGM.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2023

P.C.:

1. The challenge in this writ petition is to the order dated 3 July 2023 allowing notice of motion filed by the defendant/Municipal Corporation permitting the Corporation to file written statement when the suit was fixed for final arguments.

2. Facts giving rise to the filing of the present writ petition in short are as under:

The respondent/original plaintiff filed suit challenging notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 and consequential order dated 13 July 2013 directing demolition of the suit structure.

3. On 19 January 2018, the Trial Court passed no written statement order against the respondent/Corporation. The evidence of the plaintiff started in October 2018. The evidence was over on 19 December 2022. On 17 February 2023 after granting almost ten dates to record evidence, ultimately no evidence order was passed against the Municipal Corporation. On 4 March 2023 the suit was fixed for final arguments.

4. On 4 March 2023, the Municipal Corporation filed notice of motion for recalling of order of no written statement passed on two reasons: (i) the defendant was under impression that written statement was filed; and (ii) no written statement order came to the knowledge when the matter was proceeded for cross-examination.

5. The Trial Court allowed the notice of motion based on following reasons: (i) It is always better to have full-fledged trial on merits; and (ii) the defendant/Corporation is a public body. The Trial Court while allowing notice of motion recorded a satisfaction that the cause shown by the defendant/Corporation is not sufficient; however, for the reasons stated above, the Trial Court allowed the notice of motion.

6. It is well settled that order of no written statement can be set aside on in cases where exceptional reason for not filing written statement is made out. Neither in the notice of motion nor in the impugned order, such exceptional statement is either pleaded or such satisfaction is recorded by the Trial Court. Merely because the Municipal Corporation is a public body, rules of procedure would

not differently apply. Some latitude in favour of the public body can be understood. However, on perusal of the roznama on record, it appears that after passing the order of no written statement till filing of the notice of motion, the trial was adjourned for 53 dates, ranging six years. Therefore, in my opinion, the Trial Court could not have allowed the application for recalling no written statement order. Hence, following order:

- a) The impugned order dated 3 July 2023 passed in Notice of Motion 952 of 2023 in L.C. Suit No.2944 of 2013 is quashed and set aside;
- b) Notice of Motion No.952 of 2023 in L.C. Suit No.2944 of 2013 is dismissed.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)