

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

CIVIL WRIT PETITION NO. 14566 OF 2022

Smt. Mehmooda Khatoon Wd/o.
Haji Mohd. Islam (since deceased)
Through her daughter Smt. Rashida w/o.
Mohd. Rafique Khan ..Petitioner

Versus

The Municipal Corporation of Gr.Mumbai ..Respondent

Mr. Akash Singh i/b. Asit Kedar Singh for Petitioner.
Mr. R. Y. Sirsikar for Respondent (MCGM)

CORAM : SARANG V. KOTWAL, J.
DATE : 28 APRIL 2023

PC :

1. Heard this petition for final disposal with consent of both the parties.

2. The Petitioner has challenged the order dated 12/05/2022 passed by learned Ad-Hoc Judge, City Civil Court, Mumbai, in the Chamber Summons No.1910 of 2019 in L.C. Suit No.1827 of 2009. The Respondent Mumbai Municipal Corporation had issued notice U/s.351 of the Mumbai Municipal Corporation

Act, 1888 (hereinafter referred to as 'M.M.C. Act') against one Mehmooda Khatun. She had challenged the said notice by filing L.C.Suit No.1827 of 2009. During pendency of the suit, the original Plaintiff passed away on 25/07/2019. It is the case of the Petitioner that, she was daughter of the original plaintiff and hence, she was entitled to continue with the suit under O.22, Rule 3 of the C.P.C. She preferred Chamber Summons No.1910 of 2019 in the said suit for impleading herself as the Plaintiff in place of her mother. However, that chamber summons was dismissed by the impugned order dated 12/05/2022. Learned Judge observed that, in the ration card the Petitioner was described as daughter in law of the Plaintiff. It was different from the Petitioner's claim that she was daughter of the Plaintiff.

3. This Court (Coram: Milind N. Jadhav, J.) vide order dated 09/12/2022 directed the Petitioner to place a copy of Birth Certificate on record along with affidavit. Learned counsel for the Petitioner relied on the affidavit filed by the Petitioner along with a copy of the Birth Certificate. The Birth Certificate does mention the name of the Petitioner's mother as Mehmooda Khatoon which is

the name of the original Plaintiff in the suit. This document was not before the Trial Court when the impugned order was passed. Therefore, in consonance with the order dated 09/12/2022, in the interest of justice and in accordance with O.22, Rule 5 of the C.P.C. it is necessary that the Trial Court should give one more chance to the Petitioner to establish her claim as the legal representative of the original Plaintiff and consequently to proceed with the suit as the Plaintiff.

4. In view of these observations, following order is passed:

O R D E R

- i) The impugned order dated 12/05/2022 passed by learned Ad-Hoc Judge, City Civil Court, Mumbai, in the Chamber Summons No.1910 of 2019 in L.C. Suit No.1827 of 2009, is set aside.
- ii) The Chamber Summons No.1910 of 2019 in L.C. Suit No.1827 of 2009 is remanded back for fresh consideration before the same learned Court.
- iii) The Petitioner is at liberty to produce the aforesaid Birth Certificate and any other document in support of her claim.

iv) Leave is also granted to amend the original chamber summons with additional affidavit.

v) With these directions, the Petition is disposed of.

(SARANG V. KOTWAL, J.)