

Nikita

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

WRIT PETITION NO.13219 OF 2023

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Pawankumar Gulabchand Jain

... Petitioner

V/s.

The Municipal Corporation of Greater
Mumbai

... Respondent

Mr. Ganeshlal B. Bhatt, for the Petitioner.

Mr. R. R.Y. Sirsikar for the Respondent (MCGM).

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

P.C.:

1. By this writ petition, the petitioner-original plaintiff is challenging order passed by the Trial Court thereby allowing notice of motion to file additional written statement.

2. The petitioner filed suit challenging notice under Section 55 of Maharashtra Regional Town Planning Act, 1966. The suit structure in the plaint is Shop No.1 at Deonar. However the respondent corporation by written statement dated 26th February 2019 filed written statement in relation to Shop No.19 ad-measuring 10' X 45' situated at Govandi Mumbai.

3. After realizing the mistake that the written statement filed was for a different structure, the defendant corporation filed a

notice of motion seeking permission to file additional written statement. The Trial Court allowed the notice of motion holding that the earlier written statement was in relation to different premises and will not amount to withdrawing admission.

4. I have perused the description of structure in the notice issued to the petitioner Paragraph No.7(a) of written statement dated 26th February 2019 and paragraph No.7(a) of the additional written statement affirmed on 26th August 2022. On perusal of the description of the property, it is evident that the earlier written statement dated 26th February 2019 was in relation to Shop No.19 at Govandi, Mumbai. The Trial Court, therefore, rightly permitted the defendant corporation to file written statement. However, the Trial Court ought to have impose cost on the person responsible for filing wrong written statement. Hence, following order:

- a) Respondent-Municipal Corporation is directed to recover cost of Rs.10,000/- from the officer responsible for filing written statement dated 26th February 2019.
- b) The recovery shall be made from the concerned official responsible for filing written statement dated 26th February 2019 and such cost of Rs.10,000/- shall be paid to the plaintiff within eight weeks from today.

5. The writ petition stands disposed of.

(AMIT BORKAR, J.)