

AGK

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

WRIT PETITION NO.13970 OF 2023

Ranjit Pratap K. Singh

... Petitioner

V/s.

Municipal Corporation for Greater
Mumbai & Ors.

... Respondents

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.11.06
17:02:30 +05'30'

Mr. Rammani Upadhyay for the petitioner.

Mr. R.Y. Sirsikar for respondent Nos.1 and 2/MCGM.

Mr. Reehan Ajmerwala i/by M/s. Manilal Kher Ambalal
& Co., for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. Learned advocate for the petitioner seeks deletion of respondent No.3. Petitioner is permitted to delete respondent No.3. Amendment to be carried out forthwith.

2. The petitioner/original plaintiff is challenging order dated 21 August 2023 rejecting notice of motion seeking permission to lead evidence in support of the plaintiff's case.

3. The predecessor of the petitioner had filed Long Cause Suit No.1235 of 2023 seeking a declaration that the notice issued by defendant No.1 under Section 314 of the Mumbai Municipal Corporation Act, 1888 be declared as illegal and not binding on the petitioner. Consequential injunction seeking restoration of

possession is also sought. Relief of grant of permanent accommodation or alternative structure is also sought.

4. It needs to be noted that the petitioner is not in possession of the suit premises. Therefore, there is no question of the petitioner prolonging the suit for the purpose of getting benefit of the interim order.

5. In this scenario, the petitioner needs to be given an opportunity to lead oral evidence in support of his case. Hence, the impugned order dated 21 August 2023 needs to be allowed as, in my opinion, the petitioner has made out a case for the reasons set out in the notice of motion for setting aside order dated 21 August 2023.

6. Learned advocate for the petitioner states that the Trial Court has fixed the suit on 8 November 2023 and he will file affidavit of evidence on 8 November 2023 itself. The statement is accepted.

7. In view of the reasons stated in the notice of motion and the statement that the petitioner will file affidavit of evidence on 8 November 2023, the impugned order dated 21 August 2023 passed by the Judge, City Civil Court, Greater Mumbai in Notice of Motion No.4645 of 2022 in L.C. Suit No.1235 of 2013 is allowed.

8. Notice of Motion No.4645 of 2022 is made absolute.

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

(AMIT BORKAR, J.)