

Ajay

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

WRIT PETITION NO. 2996 OF 2024

Vimal Agarwal

.. Petitioner

Versus

The Municipal Corporation for Greater Mumbai
& Anr.

.. Respondents

-
- Mr. Ashok R. Pande a/w. Mr. Shobhit Shukla, Advocates for Petitioner.
 - Mr. Sagar Patil, Advocate for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 05, 2024.

P.C.:

1. Heard Mr. Pande, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondents – MCGM.

2. The impugned order of which exception is taken in the present Writ Petition is dated 02.12.2023 passed by the City Civil Court, Mumbai in L.C. Suit No.3253 of 2018. It is an order in respect of marking of documents filed by the Plaintiff. Suit is filed to challenge statutory notice issued by the Respondents under Section 351 of the Mumbai Municipal Corporation Act, 1988(for short “**MMC Act**”) .

3. In support of Plaintiff’s case, reliance is placed on 35 documents. These 35 documents were placed on record by the Plaintiff. A comprehensive list of these documents is appended at

Exhibit “I”, page No.871 of the Writ Petition. In the impugned order, 10 out of the 35 documents have been marked as exhibits “10” to “19” by the Trial Court since these documents have been admitted by the Defendants. In the list of 35 documents, these documents are marked are at Sr. Nos. 24, 25, 28 to 35. Learned Trial Court has next stated that the Plaintiff shall prove the rest of the documents as per law. The Plaintiff has taken exception to this order of the Trial Court and has filed the present Writ Petition.

4. Ideally there is nothing incorrect in the order dated 02.12.2023. Plaintiff would need to comply with the said order. Plaintiff would have to prove the remaining 25 documents which have not been admitted by the Defendants either by primary evidence or secondary evidence in accordance with the provisions of chapter V of the Indian Evidence Act, 1872. Rather than doing so, the Plaintiff has preferred the present Writ Petition. I would have relegated the Plaintiff back to the Trial Court to prove the remaining documents in accordance with law, but only at the profuse request made by Mr. Pande that remanding the matter would once again delay the trial, I am inclined to go through the balance 25 documents, the details of which are made available in the Writ Petition and pass certain directions so that the delay can be avoided.

5. Mr. Pande has taken me through the list of the 25 documents which are appended to the Writ Petition and would categorically submit that documents at Sr. Nos.3 to 23, 26 and 27 are either original documents or certified photocopies of public documents. He would submit that substantial documents are in respect of correspondence between the parties and the Municipal Corporation. He would submit that the Defendants cannot deny marking of these documents as exhibits, since the Competent Authority of the Municipal Corporation has considered each of these documents individually on its own merits and enumerated the same in its speaking order dated 26.11.2018 which is the subject matter of the Suit filed by the Plaintiff.

6. In order to buttress his submission, Mr. Pande has drawn my attention to the order dated 26.11.2018 which is appended at page No. 103 – Exhibit “E” to the Writ Petition. That order is passed by the Competent Authority namely the Designated Officer – 2, Assistant Engineer (Buildings & Factories) G/South Ward, on behalf of the Municipal Corporation directing the Plaintiff to stop change of user and demolish the notice structure within 15 days from the date of that order, failing which the Plaintiff (owner) will have to face prosecution and probable conviction for failing to do so. He would submit that from internal page Nos.3 to 6 of the aforesaid order, each of these 25 documents have been considered individually by the Competent Authority and Designated Officer. He would submit that most of these

documents are public documents. According to Plaintiff, these documents have also been acknowledged by the Municipal Corporation. He would submit that in the affidavit of evidence a detailed description of these documents has been offered by the Plaintiff's Witness and therefore these documents should have been marked by the learned Trial Court on 02.12.2023 itself. He would submit that merely because Defendants denied admission of these documents, these documents have not been marked.

7. I have perused the impugned order dated 02.12.2023, list of documents which are not marked and required to be proven by the Plaintiff and the pleadings. I have also heard Mr. Patil, learned Advocate appearing for the Municipal Corporation in this regard.

8. As stated above, no fault can be found with the impugned order. Plaintiff's right to prove the remaining documents is not curtailed. Plaintiff's Witness has filed his affidavit of evidence. From the said affidavit of evidence, if the Plaintiff's Witness has proven and stated that the documents are either originals or certified copies, then those documents will have to be taken on record as primary evidence and marked as exhibits. If the Plaintiff's Witness has not done so, then the Plaintiff's Witness is directed to file a fresh Affidavit for marking of the original documents and certified copies as exhibits as per the provisions of Sections 62 read with 64 of the Indian Evidence Act,

1872. Plaintiff will have to show and prove that each of the document to be marked, if it is acknowledged by the Defendants, rather any of the Defendants, then that document can also be marked by the Trial Court as an exhibit. Similarly, documents / correspondence bearing the original acknowledgment stamp of the Municipal Corporation can also be marked as an exhibit. Plaintiff will have to show and refer to each of the 25 documents for proving them through primary evidence. Those of the documents which cannot be proven by primary evidence, will have to be proven by leading secondary evidence under Sections 63 read with 65 of the Indian Evidence Act, 1872.

9. Mr. Pande has drawn my attention to the list of documents and would contend that most of the documents out of the balance 25 documents are original documents and hence they have to be marked as Exhibits. If Mr. Pande is right, then the original documents or certified copies can / shall be marked by the learned Trial Court after examining each one of them as an Exhibit strictly in accordance with law. In this regard, Plaintiff is therefore directed to file an additional Affidavit explaining the status of each of the 25 documents in *seriatum* and place the same before the learned Trial Court for consideration. The learned Trial Court shall thereafter embark upon the exercise of marking these documents as exhibits one by one and complete the exercise in accordance with law.

- 10.** All contentions of the Plaintiff are expressly kept open.
- 11.** The impugned order dated 02.12.2023 is sustained with the above directions to the learned Trial Court. Since the suit is of the year 2019, the learned Trial Court is requested by this Court to determine the Suit as expeditiously as possible and in any event within a period of 10 months from today.
- 12.** With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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