

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2907 OF 2024

Avinash Waval

.. Petitioner

Versus

Municipal Corporation for Greater Mumbai and
Anr.

.. Respondents

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- Mr. Amrut Joshi a/w. Yazad Udawadia and Ms. Kavita Sharma i./by Ganesh and Co., Advocates for Petitioner.
- Mr. Harish Pawar a/w. Mr. Rudra Kanekar, Advocate for Respondent No.4.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 14, 2024

P.C.:

1. Heard Mr. Joshi, learned Advocate for Petitioner and Mr. Pawar, learned Advocate for Respondent No.4.

2. Right to lead evidence is a substantive right especially in a suit filed in the facts and circumstances of the present case. Witness action is virtually at the last stage namely when the Plaintiff before cross-examination proceeds, desires to rely upon two documents which stand rejected by the learned Trial Court by its order dated 05.02.2024 which is at page No.116, Exhibit-K to the Petition.

3. The precursor to the above order dated 05.02.2024 is the order dated 11.01.2024 wherein the learned Trial Court being seized with marking of various documents relied upon by the Plaintiff and

while in the course of marking of these documents, the two documents namely documents at serial Nos.1 and 2 were not marked and adequate liberty was given to the Plaintiff to lead secondary evidence in respect of the two documents, if the Plaintiff desired to exhibit them. Reasons for not marking was noted by the Trial Court in that order. The Plaintiff therefore filed Application dated 05.02.2024 for proving these two documents.

4. I have impressed upon the Plaintiffs' Advocate that the Application dated 05.02.2024 filed pursuant to liberty granted by the Trial Court in its order dated 11.01.2024 is *prima facie* inadequate and that has led to the passing of order dated 05.02.2024, which is impugned in the present Petition.

5. In view of the substantive order dated 05.02.2024, delineating the marking of documents and rejecting the marking of two documents with reasons, I am of the opinion that one opportunity should be granted to the Plaintiff as a last chance in order to prove the two documents in accordance with law for exhibiting them for which Plaintiff was infact given the opportunity by the Trial Court itself. In that view of the matter, without expressing any opinion on merits about the rejection of the two documents at serial Nos.1 and 2 by the order dated 05.02.2024, the said order dated 05.02.2024 stands quashed and set aside. If the Plaintiff is in a position to prove the

aforesaid two documents strictly in terms of the provisions of the Indian Evidence Act, 1872 (for short '**the said Act**') they shall do so by filing an appropriate Application within a period of three weeks from today. This leave is granted to the Plaintiff.

6. Needless to state that this final opportunity granted to the Plaintiff in view of the facts and circumstances of the case and various orders passed in the present case. If the Plaintiff files the Application before the Trial Court, the learned Trial Court is directed to determine the said Application strictly in accordance with law within a period of one week from the date of filing of the Application. The suit has already been expedited and one extension has been granted by the Court. Hence, the suit is time bound.

7. Order dated 20.02.2024 is placed before me jointly, wherein the learned Trial Court Judge had sought three months extension of time, the same having been given, it would end on 20.05.2024. However, in view of today's order, the said extension for disposal of the suit by the learned Trial Court shall stand extended by a further period of two months thereafter which would necessarily imply that the learned Trial Court shall make endeavour to dispose of the suit proceedings on or before 19.07.2024. It is clarified that this Court has not expressed any opinion on merits of the two documents which are the subject matter of the present Writ Petition and it shall be entirely

at the discretion of the Trial Court to determine marking of the said documents as Exhibits strictly in accordance with the provisions of the said Act.

8. With the above directions, Writ Petition is disposed.

H. H. SAWANT

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[MILIND N. JADHAV, J.]