

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15582 OF 2023

Mohd. Hasan Fauzdar Ansari

.. Petitioner

Versus

Bhiwandi Nizampur Sahar Municipal
Corporation

.. Respondent

-
• Mr. Amol Mhatre a/w. Sameer Mhatre, Advocates for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Mhatre, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 21.03.2024 and the Writ Petition.
- 4.** Writ Petition takes exception to twin orders dated 29.11.2022 and 25.08.2023. By virtue of that order Miscellaneous Civil Appeal in which order passed under Exhibit-5 by the learned Trial Court is challenged has been disposed of on the ground that the Appeal has remained pending since 23.12.2021 and after more than one year despite public notice having been issued in the interregnum calling upon the Appellant to comply with the office objections within 15 days, the same has not been complied with. The reason mentioned in the order is that Appellant may have either lost interest or is not

diligent enough to proceed further.

5. Mr. Mhatre in his usual fairness at the time of mentioning informs the Court that on 19.12.2023, notice was issued for final disposal to the Respondent and was made returnable on 06.02.2024. He would submit that pursuant thereto Respondent is served. Considering the fact that the Respondent is a public body and more specifically the Appellant is challenging an order which stands rejected by the District Court in Appeal, no purpose would be served by listing the matter on board once again since in the event if the matter does not reach on that date, the hearing of the Writ Petition will be protracted further. Hence, I am inclined to dispose of this Writ Petition at the time of mentioning today. Copy of the Petition is handed over to me. Needless to state that no prejudice whatsoever will be caused to the Respondent – Corporation.

6. Writ Petition is filed by the Appellant. Reasons and grounds for non removal of the office objections have been explained and stated in paragraph No.20 of the Writ Petition. I have perused the same. According to the Writ Petitioner, Advocate on record before the Appeal Court was seized with the matter and he did not take immediate steps to remove the office objections. Petitioner is also claiming to be an illiterate person and in that view of the matter, it was only after he made enquiry, it was discovered by him that

Miscellaneous Civil Appeal was dismissed for non removal of office objections and default.

7. Petitioner in the Writ Petition has averred that he is ready and willing to take appropriate steps for removal of the office objections and in that view of the matter, has sought quashing of the twin orders dated 29.11.2022 and 25.08.2023. Both orders are at page Nos.42 and 43 of the Writ Petition. In order to ensure that the substantive right of filing the Appeal of the litigant is preserved and in the interest of justice, the present Writ Petition stands allowed, subject to the Petitioner paying costs of Rs.5,000/- to the Kirtikar Law Library, High Court Mumbai. The twin orders dated 29.11.2022 and 25.08.2023 are quashed and set aside. The costs shall be paid within a period of one week from today and receipt of payment of costs shall be placed before the learned Appellate Court on 28.03.2024 at 11.00 a.m. and appropriate directions shall be obtained from the learned Appellate Court for removal of office objections in the MCA.

8. If the costs are paid, learned Appellate Court is directed by this Court to permit the Writ Petitioner – Appellant to remove the office objections, which shall be removed by him within a period of one week thereafter. Appeal shall thereafter be registered and heard by the learned Appellate Court strictly in accordance with law at its discretion.

9. With the above directions, Writ Petition stands allowed and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
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SAWANT

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Date: 2024.03.22
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