

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16689 OF 2024

Suleman Mohammed Hussain Wawda .Petitioner

Versus

The Municipal Corporation of Greater Mumbai .Respondents
& ors.

Mr. Aseem Naphade i/b. Mr. Omar K. Shaikh, Advocates, for the
Petitioner

Mr. Santosh Pathak a/w. Mr. Kailash Pathare, Advocates, for
Respondent Nos. 2 & 3

CORAM : S. M. MODAK, J.

DATE : 26.11.2024

P. C.

1. Heard Mr. Naphade, learned Counsel for the Petitioner and
Mr. Pathak, learned Counsel for Respondent Nos. 2 & 3. They have
appeared as per the private notice. He undertakes to file
Vakalatnama within a period of two weeks from today.

2. The present Petitioner is the Plaintiff. He has challenged the
notice issued under Section 351 of the Mumbai Municipal
Corporation Act, 1888 in the Suit filed in the year 2018. He intends
to withdraw the Suit and that is why he has moved an Application

on 21.10.2024 which is at page No. 54. It is at Exh. 66F of the trial Court's record. The trial Court has not decided that Application on 21.10.2024. The present Respondent Nos. 2 & 3, who claim to be tenants of the Petitioner have filed the Chamber Summons for intervention on 21.10.2024. It was adjourned for 'filing reply'.

3. The only contention raised by Mr. Naphade, learned Counsel for the Petitioner is that the Original Plaintiff is dominus litis and he has right to withdraw the Suit. He placed reliance on the decision of the Supreme Court in the case of *K. S. Bhoopathy & ors. vs. Kokila & ors.*, reported in *(2000) 5 SCC 458*, whereas the Respondents' contention is that if the Suit is withdrawn, status-quo Order existing will stand vacated and their possession will be disturbed. The Chamber Summons can be allowed or not is the question of merits to be decided by the trial Court.

4. The trial Court is directed to hear the Withdrawal Application and the Chamber Summons together and to pass an appropriate Order on merits. With these observations, the Writ Petition is disposed of.

(S. M. MODAK, J.)