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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 382 OF 2024
WITH
INTERIM APPLICATION NO. 8776 OF 2024**

Vasudeo V. Nemlekar through ... Appellant/Applicant
POA Kochuputhenparampil Scaria
James

Vs.

The Mumbai Municipal Corporation ... Respondents
through Assistant Municipal Commissioner
K/West Ward

Mr. Rajendra Pai, Senior Counsel a/w. Ms. Prapti Karkera and
Prajakta Shringapure for the Appellant/Applicant.

Mr. Narendra V. Walawalkar a/w. Mr. Om Suryavanshi for the
Respondent – BMC.

Mr. Sandesh Jadhav, Asstt. Engineer (B & F).

Mr. Prakash Mhatre, Sub-Engineer (Maintainence)

CORAM : GAURI GODSE, J.

DATE : 7th FEBRUARY 2025

ORDER :

1. Learned senior counsel for the appellant on instructions seeks leave to withdraw the appeal with a request that it may be clarified that the observation in the impugned order should not affect the merits of the trial in the suit. He submits that the suit be decided on

its own merits uninfluenced by the observations in the impugned order. He further submits that it may also be clarified that the trial should proceed denovo.

2. In paragraph 18 of the impugned order the learned judge has already clarified that the suit will have to be restored for trial afresh. Hence, I do not see any impediment to clarify as requested by the learned senior counsel. Learned senior counsel for the corporation has no objection for this clarification if the appeal from order is withdrawn.

3. It is clarified that as observed by the learned Judge in the impugned order the suit shall be tried denovo. The suit shall be decided on its own merits uninfluenced by the observations in the impugned order. It is further clarified that all contentions of all the parties on merits are kept open.

4. Leave granted. Appeal is disposed of as withdrawn, with the aforesaid clarification.

5. Since the suit is of the year 2007, it is expected that the trial court shall decide the suit as expeditiously as possible. The parties shall not be granted any unnecessary adjournments.

6. Appeal from order is disposed of in the aforesaid terms.

7. In view of the disposal of the appeal, interim application is disposed of as infructuous.

[GAURI GODSE, J.]