

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

WRIT PETITION (STAMP) NO.5612 OF 2015

M/s. Hornby Properties Pvt. Ltd.

.. Petitioner

Versus

Kai Pestonji Nicholson and others

.. Respondents

**Shri. Mayur Khandeparkar i/by M/s. Kaikini Phadke & Associates,
for the Petitioner.**

Shri. Shishir Joshi a/w Santosh Pawar, for the Respondents No.9 & 10.

CORAM : R.M. SAVANT, J.

DATE : 09th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 31st January, 2015 passed by the Learned Judge of the City Civil Court Greater Mumbai, by which order the Chamber Summons No.2061 of 2014 filed by the Respondents No.9 and 10 herein for their impleadment in the suit in question came to be allowed. A reading of the said order discloses that the same is founded on prayer clause (d) of the suit, by which prayer clause the Petitioner/original Plaintiff had sought an injunction and direction against the Defendant No.8 not to develop, construct or undertake further repairs of the building known as Hornby Building. The Respondents No.9 and 10 in the light of the said prayer had filed the Chamber Summons in question seeking their impleadment as it was their case that grant of the said prayer would prejudice them as they

are tenants who are interested in the repair work of the building being completed.

2. The Learned Counsel appearing for the Petitioner Shri. Mayur Khandeparkar on instructions would submit that the Petitioner/original Plaintiff would delete prayer clause (d) from the suit in question. Statement accepted. In view of the said statement made by Shri. Mayur Khandeparkar, the cause for filing the Chamber Summons in question does not survive as the Respondents No.9 and 10 i.e. Applicants as indicated above had filed the Chamber Summons only having regard to the fact that the grant of prayer clause (d) would prejudice them. In view of the said statement made by Shri. Mayur Khandeparkar the impleadment of the Respondents No.9 and 10 has accordingly turned infructuous. The Learned Counsel appearing for the Respondents No.9 and 10 Shri. Shishir Joshi also fairly accepts the said position. In view of the said statement made by Shri. Mayur Khandeparkar, it is not necessary to consider the impugned order on merits. The same to accordingly stand set aside. The Learned Counsel Shri. Mayur Khandeparkar assures the Court that the Petitioner would inform the MBRRB and the MHADA that prayer clause (d) is deleted from the prayers in the suit and that there is now no impediment for the repair work to proceed. In the light of the above, the Writ Petition to stand disposed of.

[R.M. SAVANT, J]