

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

WRIT PETITION NO.4721 OF 2015

M/s. Proviso Builders and	]
Developers, a Partnership firm	]
Registered under the provisions of the	]
Indian Partnership Act, 1932 and	]
having its principle office No.1201 &	]
& 1202 Bhoomiraja, Costaraca	]
Commercial Complex, Plot No.1, 1A,	]
Sector 18, Palm Beach Road, Sanpada,	]..... Petitioner.
Navi Mumbai 400 705	] (Org. Defendant)

versus

M/s. Shiv Shankar Builders & Developers	]
Having address at Shiv Shankar – 2	]
Shop no.123; plot no 17, sec-15	]
Sanpada, Navi Mumbai	]..... Respondent

**Mr. S S Patwardhan for the Petitioner.
Mr. Sanskar Marathe for the Respondent.
Respondent Nos.2 to 26 deleted by order dated 11/09/2015.**

**CORAM : R. M. SAVANT, J.
DATE : 11th September 2015**

ORAL JUDGMENT

1 At the out set the learned counsel for the Petitioner seeks deletion of the Respondent Nos.2 to 26 as they are formal parties in the context of the challenge raised in the above Petition. The said Respondents are accordingly deleted at the risk of the Petitioner. Amendment to be carried out forthwith.

2 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 09/02/2015 passed by the learned Joint Civil Judge, Senior Division, Panvel by which order the application (Exhibit 80) filed by the Petitioner for its impleadment in the suit in question being Special Civil Suit No.573 of 2010 came to be rejected.

4 The facts that are necessary to be cited for the adjudication of the above Petition can be stated thus :- The Respondent herein is the original Plaintiff who has filed the suit in question for specific performance against the Respondent Nos.2 to 26 who are the original owners of the lands in question. In the said suit the relief of declaration and injunction was also claimed against the said Respondents. The Petitioner herein sought its impleadment on the ground that it has Memorandum of Understanding executed by one Vijay Patil who represented the owners of the land in question. It is pursuant to the said Memorandum of Understanding that two separate agreements with the said Vijay Patil and the Defendants were executed pursuant to which it is the claim of the Petitioner that the original lease agreement executed in favour of the Defendants by CIDCO was also handed over to the Petitioner. The Petitioner also claims that all the original documents in respect of the plot of land which

is the subject matter of the agreements are in possession of the Petitioner. The Petitioner accordingly applied for his impleadment on the said basis.

5 The Respondent herein i.e. the original Plaintiff opposed the said application filed by the Petitioner.

6 The Trial Court i.e. the Joint Civil Judge, Senior Division, Panvel considered the said application and as indicated above by the impugned order dated 09/02/2015. rejected the same. The Trial Court has observed that the Petitioner is neither a necessary nor a proper party to the suit in question as the Petitioner has purchased the property during the pendency of the suit.

7 The learned counsel for the Petitioner Shri Patwardhan in support of the relief sought in the Petition would place reliance on the judgment of the Apex Court reported in (2013) 5 SCC 397 in the matter of Thomson Press (India) Limited v/s. Nanak Builders and Investors Private Limited and others. In the said case before the Apex Court, the facts were somewhat identical to the facts in the present case as in the said case also there was a transfer pendente lite, in fact the transfer was made when the injunction was in operation in the suit. The Apex Court found the said transfer to be in breach and violation of the said injunction order which was operating in the suit. The Apex Court however was of the view that considering the nature of the suit,

which was one for specific performance, it would meet the ends of justice if the Appellant Thomson Press (India) Ltd. is added as party Defendant in the suit. The Apex Court has adverted to its various judgments and thereafter crystallized that having regard to the decree of specific performance which is sought it would be appropriate that the transferee pendente lite is joined as party Defendant to the suit. In paragraphs 57.1 to 57.4 of the concurring judgment it has been summed up as follows :-

“57.1 The appellant is not a bona fide purchaser and is, therefore not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.

57.2 The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3 Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.

57.4 The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.”

Hence in the light of the judgment of the Apex Court in *Thomson Press (India) Limited's* case (supra), the impugned order dated 09/02/2015 would have to be quashed and set aside and is accordingly quashed and set aside. The Application (Exhibit 80) would accordingly stand allowed. Amendment to be

carried out within four weeks from date. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.