

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

WRIT PETITION (ST)NO.10310 OF 2014

Lodha Properties Development	]	
Private Limited	]	
a Company incorporated under	]	
the provisions of the Companies	]	
Act, 1956 having its registered office	]	
at 216 Shah & Nahar Industrial	]	
Estate, Worli, Mumbai-400 018.	]	...Petitioner (Orig. Applicant)

v/s.

1 Kedia Holdings Private Limited	]	
A company incorporated under the	]	
provisions of the Companies Act	]	
1956, Having its office at A-32,	]	
Bldg. No.3, Rahul Mittal Industrial	]	
Estate, Sir M.V. Road, Andheri(E)	]	
Mumbai-400 059.	]	
2 The Municipal Corporation for	]	
Greater Mumbai	]	
A body incorporated under the	]	
Bombay Municipal Corporation Act]		
1988, and Having its office at	]	
Mahapalika Marg, C.S.T.	]	
Mumbai-400 001.	]	
3 The Assistant Municipal Commissioner	]	
D Ward, Municipal Office	]	
Jabanputra Compound, Nana Chowk	]	
Mumbai-400 007.	]	
4 The Assistant Engineer (B & F)	]	
D Ward, Designated Officer-II	]	
D Ward Municipal Office, Jabanputra	]	
Compound, Nana Chowk	]	
Mumbai-400 007.	]	...Respondent No.1 (Orig.Plaintiff) Respondent Nos.2 to 4 (Orig. Defendants)

Mr. Zal Andhyanrujina with Neveille Mukerji & Ms. Snehal Salvi i/b. M/s. Wadia Gandhi & Co. for the Petitioner.

Mr. Snehal Shah with Ramchandran N. i/b. M/s. Narayanan & Narayanan for the Respondent No.1.

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

ORAL JUDGEMENT:-

At the outset, the learned counsel for the Petitioner seeks deletion of the Respondent Nos.2 to 4 to the above Petition as in the context of the challenge raised in the above Petition, they are only formal parties. The said Respondents are accordingly deleted at the risk of the Petitioner.

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 26th February, 2014 passed by the learned Judge of the City Civil Court, Greater Mumbai, by which order the Chamber Summons filed by the Petitioner being Chamber Summons No.2705/2013 came to be rejected.

4] Shorn of unnecessary details, a few facts can be read thus:-

The Respondent No.1 is the original Plaintiff in the suit in question being Regular Civil Suit No.4298/2013. The said suit is filed

challenging the notice issued under section 351 of the Mumbai Municipal Corporation Act, 1988 for short the said Act. In the context of the present Petition, it is required to be noted that in the plaint in paragraphs 5, 16 and 17 allegations have been made against the Petitioner i.e. the Applicant and the substance of the allegations is that the notice under section 351 has been issued at the instigation of the landlord i.e. the Petitioner. It is required to be noted that in paragraph 5 the factum of the suit filed by the landlord in the Small Causes Court at Bombay has been mentioned. It is also alleged against the Petitioner that the Plaintiff was informed in no uncertain terms that if it did not vacate the suit premises and hand over the vacant possession of the same to the landlord, then, the Defendant No.1 Corporation would be used to harass and prosecute the Plaintiff. It is alleged, that thereby attempt is made to get the Plaintiff to succumb to the diktats and demands of the landlord. In the notice under section 351 which is the subject matter of the suit a mention is made therein of the complaints made by the landlord. It appears that a Caveat was filed by the landlord in the City Civil Court pursuant to which it was heard at the time of consideration of the application for ad-interim relief moved by the Plaintiff in the present suit. However, the Trial Court has postponed the consideration of the issue of jurisdiction as also the application for impleadment of the landlord in

the suit to a future date and directed that status quo be maintained in respect of the notice issued under section 351. It is thereafter that the instant Chamber Summons No.2705/2013 came to be moved on 20th November, 2013 which was a day prior to the ad-interim relief being granted in favour of the Plaintiff. In the affidavit in support of the Chamber Summons, the reason why the Petitioner/Applicant i.e. the landlord should be impleaded in the suit in question was set out. The fact that the Applicant had become the owner/landlord of the building in question, which it has purchased from the erstwhile owner Mr. Nathuram Ramnarayan Pvt. Ltd. was mentioned. It is also mentioned that the letter of attornment to the tenants was issued as also the factum of R.A.E. Suit bearing No.1040/1686 of 2012 being filed was mentioned. The impleadment was sought on the ground that the notice under section 351 has been issued pursuant to the complaints which were made by the Applicant/ landlord. The factum of the issuance of the notice under section 488 of the said Act was also mentioned in the affidavit in support of the said chamber summons. It was lastly mentioned that the order passed in respect of the suit premises would have a direct effect on the rights of the Applicant as the Applicant would be bound by the orders passed by the City Civil Court and, therefore, it was imperative that the Applicant be given an opportunity of hearing in the matter.

5] The said Chamber Summons was opposed to on behalf of the Plaintiff by filing an affidavit in reply. The said reply contains identical averments as made in the plaint whereby allegations are sought to be leveled against the Applicant. It was also averred that the Applicant is always at liberty to make complaint to the BMC, such document and evidence as may be available with it to belie the case of the Plaintiff. The Trial Court considered the said application i.e. Chamber Summons No.2705/2013 and has by the impugned order dated 26th February, 2014 rejected the said Chamber Summons. The Trial Court as can be seen from the impugned order has accepted the fact that in so far as the Applicant being the landlord is concerned, there is no dispute about the same as also the fact that the notice under section 351 came to be issued by the BMC at the instance of the landlord. The lower Appellate Court for the reason that it is for the Plaintiff to prove that it has carried out the construction of the offending structure with the permission of the BMC or construction of the suit structure is legal one, held that the Applicant is not a necessary party to the suit. The judgment of the Apex Court reported in **AIR 1997 SC 64** in the matter of *M/s.Aliji Momonji & Co. V/s. Lalji Mavji* and others on which reliance was placed by the Applicant was sought to be distinguished by the Trial Court on the ground that the facts in the cited case were altogether

different from the facts in the instant case. The Trial Court observed that the Applicant in the instant case is not defending the subject notice and, therefore, the said judgment would not further the case in so far as its impleadment in the suit in question is concerned. As indicated above, it is the said order dated 26th February, 2014 passed by the learned Judge of the City Civil Court Bombay which is taken exception to by way of the above Petition.

6] On behalf of the Petitioner, the learned counsel Shri Andhyanrujina would reiterate the case of the Applicant i.e. the Petitioner before the Trial Court. The learned counsel would contend that in the facts of the present case where the Petitioner is admittedly the landlord and the notice under section 351 being issued at the behest of the landlord, the impleadment of the landlord is necessary. The learned counsel sought to place reliance on the judgment of the Apex Court in Aliji Momonji & Co. (supra) in support of the said contention.

7] Per contra, the learned counsel Shri Shah would contend that having regard to the fact that there are serious disputes between the parties which is evidenced by the fact that the landlord has filed the suit in the Small Causes Court against the Plaintiff for his eviction, the impleadment sought in the present suit is not necessary. The

learned counsel would contend that the adjudication that would take place in the present suit would not in any manner affect the landlords rights, the learned counsel would place reliance on an observation made in Aliji Momonji & Co. (supra) which finds place in paragraph 5 of the judgment. The learned counsel also sought to place reliance on the judgment of this Court reported in **2012(2) ALL MR 171 in the matter of Aijaz @ Azaz Mohammed Shaikh V/s. Municipal Corporation of Greater Bombay and Anr.** and especially paragraph 15 thereof to contend that the instant application for impleadment is motivated having regard to the background facts.

8] Having heard the learned counsel for the parties, I have considered the rival contentions.

9] The question that is posed is whether the Petitioner is required to be impleaded in the suit in question being L.C. Suit No.4298/2013.

10] In the context of the said question, a few facts would be required to be revisited once again. As indicated above, it is an undisputed position that the Petitioner is the landlord of the property in question wherein the Plaintiff is in occupation of certain premises. It is also an undisputed position that in so far as the notice issued

under section 351 is concerned, the same has been issued after complaints were made by the Petitioner. The Plaintiff has also accepted the said fact by alleging that it is the Petitioner who is behind issuance of the said notice. As indicated above, in paragraph 5, 16 and 17 allegations have been made against the Petitioner and ultimately the said allegations can be said to be crystallized or concised in paragraph 23 clause(e) where the ground set out is that the notice has been squarely issued at the instigation of the landlord of the suit premises. It would, therefore, be in the said context that the present matter would have to be considered. In so far as the parties who are required to be joined to a suit are concerned, there is fine delineation of the said parties, into proper or necessary parties. Proper parties are those who are necessary to be joined for an effectual and complete adjudication of the suit whereas necessary parties are those without whom there cannot be an effective and complete adjudication and no relief can be granted. A useful reference could be made to the judgment of the Apex Court in Aliji Momonji & Co. (supra). The Apex Court in the said case was also concerned with a suit filed for perpetual injunction restraining the Municipal Corporation from demolishing the portion of the building on the ground of making unauthorised construction. In the said case, an application was made under Order 1 Rule 10 by the landlord. The

Apex Court by adverting to the distinction between proper and necessary parties, in the said case held that the landlord is a necessary party to the suit. The Apex Court thereafter had observed in paragraph 5 that the construction which is sought to be demolished by the Municipal Corporation may be made with or without the consent of the landlord or lessor but the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. In the light of the said judgment of the Apex Court in Aliji Momonji & Co. (supra) as also considering the factual background in the present case, it cannot be said that the presence of the Petitioner i.e. the Applicant is not necessary for adjudication of the suit, may be the Applicant is not a necessary party to the suit but considering the facts prevailing in the present case, the Applicant can be said to be a proper party to the suit whose presence is required for a complete and effectual adjudication of the suit.

11] In my view, the reliance placed by the learned counsel for the Respondent No.1 on the observation made in paragraph 5 in Aliji Momonji case (supra) would not further the case of the Respondent No.1 as the test to be applied is whether in the facts of the present case the landlord is either a necessary or a proper party. In so far as the judgment of this Court in Aijaz @ Azaz Mohammed Shaikh is concerned, in paragraph 15 of the said judgment, this Court had

observed that it is not in all cases that a person at whose behest or persuasion notice is issued under section 351 can be allowed to be impleaded as a party to a particular suit, the Court in such a case has to exercise its discretion vested in it under Order 1 Rule 10 of the Code of Civil Procedure. This Court had, therefore, issued a note of caution. The facts in the present case are not such that discretion cannot be exercised in favour of the Applicant. Having regard to the fact that it is an undisputed position that the Applicant is the landlord who is the complainant after which the notice under section 351 came to be issued, the fact that the Applicant has also filed a suit against the Plaintiff in the Small Causes Court for eviction also cannot be lost sight of, as also the fact that serious allegations have been made against the Applicant in the plaint for which an opportunity undoubtedly is required to be given to the Applicant, the same can only be given if the Applicant is impleaded in the suit in question.

12] The impugned order discloses that the learned Judge of the Trial Court has without considering the aforesaid facts by merely observing that it is for the Plaintiff to prove that whether the construction is legal has rejected the application. In that view of the matter, the impugned order dated 26th February, 2014 is required to be quashed and set aside and is accordingly, quashed and set aside.

Resultantly, the Chamber Summons bearing No.2705/2013 would stand allowed.

13] The Applicant would be entitled to be joined as a party Defendant to the suit. Amendment to be carried out within four weeks from date. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the above Writ Petition.

(R. M. SAVANT, J.)

wadhwa