

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5445 OF 2013**

Mohammad Saleem s/o Abdus Salam Mansoori

..Petitioner

Vs.

The Bhiwandi Nizampura City

Municipal Corporation, Bhiwandi & Ors

..Respondents

Mr. Sachin Dhakephalkar for the Petitioner

Mr. N. R. Bubna for the Respondent No.1

Mr. G. G. Togani for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 29th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 19-3-2013 passed by the Learned Civil Judge Senior Division, Bhiwandi, by which order, the application Exhibit 17 filed by the Respondent No.2 herein for his impleadment in the Suit, came to be allowed and the Respondent No.2 was directed to be impleaded in the Suit in question.

2 The Petitioner herein is the original Plaintiff and claims to be the owner of house property No.660. The Suit in question being Regular Civil Suit No.1583 of 2012 has been filed by the Petitioner/Plaintiff on the apprehension that the construction which is being put up by him on house property No.660 after its demolition would be demolished by the Respondent No.1 Corporation and therefore he has claimed the relief that no action be taken against the said construction without following due process of law. In the said Suit, the instant

application Exhibit 17 came to be filed by the Respondent No.2 herein. The Respondent No.2 claims to reside in house property No.660/B in a room admeasuring 10 x 12ft, the boundaries of the said room have been mentioned in the application Exhibit 17. The Respondent No.2 claims to be the tenant of the Petitioner. In the application Exhibit 17, the Respondent No.2 has mentioned the various Suits which are pending between the Respondent No.2 and the Petitioner. The first Suit is Regular Civil Suit No.57 of 2011 which the Respondent No.2 has filed against the Petitioner in view of the threat of demolition given by the Petitioner. The second Suit is Regular Civil Suit No.483 of 2011 filed by the Respondent No.2 against the Petitioner, against the alleged unauthorised construction carried out by the Petitioner in the said house property No.660 after demolishing the existing structure and putting up a construction on the East of the house of the Respondent No.2. In the said Suit, the Respondent No.2 has also field an application being Misc Application No.206 of 2012 alleging breach of the injunction order against the Petitioner and thereby seeking to invoke Order XXXIX Rule 2A of the Civil Procedure Code. The last Suit is Regular Civil Suit No.254 of 2012 which has been field by the Respondent No.2 and the cause of action for the same is alleged act of the Petitioner of trying to dispossess the Respondent No.2 from the premises on 28-1-2012.

4 It is the case of the Respondent No.2 that he has objection to the

construction which is carried out by the Petitioner which he claims to be unauthorised. It is required to be noted that the construction, which is sought to be put up by the Petitioner, is on the East of the structure or the house of the Respondent No.2, which is the house where the Respondent No.2 resides i.e. house property No.660/1; whereas the house of the Petitioner bears No.660. It is in the conspectus of the aforesaid facts that the Trial Court deemed it appropriate to allow the application Exhibit 17 filed by the Respondent No.2 for his impleadment.

5 The Learned Counsel appearing on behalf of the Petitioner would seek to place reliance on the Judgment of the Apex Court in the matter of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Mumbai**¹. Placing reliance on the said judgment, the Learned Counsel would contend that in the context of the nature of the Suit that is filed by the Petitioner, the Respondent No.2 is neither a necessary party or a proper party. In so far as the judgment in Ramesh Hirachand Kundanmal's case is concerned, notice under Section 351 came to be issued to the licensee of the lessee of the Plaintiffs on which the petrol pump in question was run. The notice was issued in respect of two chattels on the ground that the construction was carried out unauthorisedly. The licensee filed the Suit in which the lessee had made an application for being joined as party. The said application was rejected on the ground that no prejudice would be caused to the lessee if the said chattels were

1 1992(3)BomC.R. 110

demolished. The Apex Court in the facts and circumstances of the case held that the Respondent No.2 in the said case is neither necessary nor a proper party to the said Suit.

6 However, the facts of the instant case as indicated above disclose that the Respondent No.2 has filed number of Suits against the Petitioner which have been adverted to hereinabove in respect of the alleged unauthorised construction carried out by the Petitioner. The said construction has been carried out to the East of the structure of the Respondent No.2 and it is the case of the Respondent No.2 that the Respondent No.1 inspite of complaints is not taking action against the said unauthorised construction.

7 In my view, having regard to the facts which are prevalent in the present matter, the order passed by the Trial Court allowing the application Exhibit 17 and thereby permitting the impleadment of the Respondent No.2 as a party to the Suit, cannot be found fault with. The presence of the Respondent No.2 would obviously aid in the adjudication of the Suit as though he may not be a necessary party is a proper party to the Suit. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]