

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6206 OF 2014

- | | | |
|----|----------------------------------|---------------------|
| 1] | Shri Arun Morarji Ruparel |] |
| | Aged 44 years |] |
| | Hindu, Indian Inhabitant |] |
| | Presently having address at 13, |] |
| | Mullick Street, Kolkata – 700007 |] |
| | |] |
| 2] | Shri Tarun Morarji Ruparel |] |
| | Aged 41 years |] |
| | Hindu, Indian Inhabitant |] |
| | Presently having address at 13, |] |
| | Mullick Street, Kolkata – 700007 |] |
| | |]..... Petitioners. |

Versus

- | | | |
|----|--|---------------------|
| 1] | The Assistant Municipal Commissioner |] |
| | `B' Ward Municipal Corporation of |] |
| | Greater Mumbai, `B' Ward Municipal |] |
| | Office, 121, Ramchandra Bhatt Marg, |] |
| | Opp. J.J. Hospital, Mumbai – 400 009 |] |
| | |] |
| 2] | Vasant Sadashiv Chikne |] |
| | Aged 48 years, of Mumbai Indian |] |
| | Inhabitant through Constituted Attorney |] |
| | Mr.Farooque M Ajmeri, carrying on |] |
| | business from terrace room above 4 th floor |] |
| | situated at 14/4, Ramesh Chamber, |] |
| | Garibdas Street, Vadgadi |] |
| | Masjid Bunder, Mumbai – 400 003 |] |
| | |]..... Respondents. |

Ms. Firdosh Moosa i/by Mr. Prakash Mahadik for the Petitioners
Mr. Vinod Mahadik for the Respondent No.1-BMC
Ms. Reshma Nair i/by Mr. K P Ravi for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 18th February 2015

ORAL JUDGMENT

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

2 The writ jurisdiction of this Court is invoked against the order
dated 25/3/2014 passed by the learned Judge of the City Civil Court, Greater
Bombay by which order the Chamber Summons No.529 of 2014 came to be
rejected.

3 Shorn of unnecessary details, a few facts, which are necessary for
the adjudication of the above Petition, can be stated thus :- The Respondent
No.2 herein is the original Plaintiff and the Respondent No.1 herein is the
original Defendant. The parties would be referred to as per their status in the
suit. The suit in question being Long Cause Suit No.148 of 2014 has been filed
by the Plaintiff challenging the legality of the notice issued under Section 354-
A of the Mumbai Municipal Corporation Act by the Defendant – Municipal
Corporation for Greater Mumbai (for brevity sake hereinafter referred to as
“the MCGM”), alleging unauthorized construction being carried out by the
Plaintiff. The said notice is referable to the complaint made by the Petitioners
herein on 24/12/2013 as regards the said unauthorized construction. It is
pursuant to the said complaint that, a stop-work notice came to be issued to
the Plaintiff on 7/1/2014. The said stop-work notice was preceded by the

inspection report of the same day i.e. 7/1/2014 which inspection report was made by the officers of the Defendant i.e. MCGM. In the context of the present Petition, it is required to be noted that it has been mentioned in the said report that the site inspection was carried on 7/1/2014. It was observed that the party is carrying out unauthorized construction of walls on terrace of (Gr.+3) floors building with syphorex blocks and M.S. Angles ladi coba ladi, also doing extension of height having M.S. Sheet on top at site under reference. Under the belief that the MCGM was not taking action against the said unauthorized construction, that the Petitioners herein had filed Writ Petition (Lodging) No.145 of 2014 in this Court seeking directions against the MCGM to take action against the said unauthorized construction. The said Writ Petition came to be disposed of by a Division Bench of this Court by order dated 31/01/2014 and directed the MCGM to take action as early as possible in respect of the unauthorized construction. The said order was passed by a Division Bench of this Court oblivious of the fact that the stop-work notice was already issued on 7/1/2014 as the said fact was not brought to the notice of the Division Bench. Be that as it may, the Plaintiff filed the instant suit being Long Cause Suit No.148 of 2014 on 10/1/2014. In so far as the plaint is concerned, it is required to be noted that in Paragraph 4 of the plaint the fact that the Petitioners are the owners has been averred. Thereafter a reference is made to the rent receipts issued by the Petitioners, and the rent receipts have also been annexed to the plaint. Hence in so far as the Plaintiff is concerned, he has

proceeded in the suit by accepting that the Petitioners herein are the owners and that the rent receipts have been issued by them. It appears that an application for interim injunction by way of Notice of Motion was moved by the Plaintiff in the said suit. The learned Judge of the City Civil Court on 13/1/2013 has granted ad-interim relief and thereby stayed the further action to be taken by the MCGM in respect of the said unauthorized construction.

4 It is thereafter that on the Petitioners getting wind of the fact that the suit has already been filed by the Plaintiff in the City Civil Court challenging the notice under Section 354-A of the MMC Act that the Petitioners filed the instant Chamber Summons No.529 of 2014. By the said Chamber Summons the Petitioners have sought their impleadment in the suit. The said Chamber Summons is founded on the fact that the Plaintiff is their tenant and that they have a decree of eviction in their favour passed by the Small Causes Court, Mumbai. The fact that the application for setting aside the decree has been rejected has also been mentioned in the affidavit in support of the said Chamber Summons. The Petitioners have also averred that they have complained to the MCGM against the unauthorized construction on 24/12/2013. It has been averred that the building is more than 60 years old and if the action is not taken the structural stability is in question and the life of the other tenants would be in jeopardy.

5 The Chamber Summons was replied to on behalf of the Plaintiff. The Plaintiff denied that the presence of the Petitioners, i.e. the Applicants in the Chamber Summons, was necessary for adjudication of the suit. The Plaintiff opposed the Chamber Summons on the ground that since the challenge is to the notice issued under Section 354-A of the MMC Act, the dispute is between the Plaintiff and the MCGM, and that the Petitioners are not necessary to be impleaded in the suit.

6 The Trial Court considered the said Chamber Summons and has by the impugned order rejected the same. The Trial Court, as the impugned order discloses,, had adverted to the fact that the Petitioners are the landlords and they have a decree of eviction in their favour which is passed against the Plaintiff. The Trial Court however on the ground that it is for the Plaintiff to show that the construction carried out by him is not unauthorized rejected the the said Chamber Summons by holding that the presence of the Petitioners is not necessary for the adjudication of the suit. As indicated above it is the said order dated 25/3/2014 which is taken exception to by way of the above Writ Petition.

7 Heard the learned counsel for the parties. The learned counsel for the Petitioners Ms. Firdosh Moosa would reiterate the case of the Petitioners i.e. the Applicants before the Trial Court, and on the basis of the facts which

have been adverted to herein above viz. that the Petitioners are the owners and they have complained against the unauthorized construction as also having regard to the structural status of the building would contend that the presence of the Petitioners is necessary for the adjudication of the suit. The learned counsel would also contend that the Plaintiff has obtained an ad-interim order based on documents which are questionable.

8 Per contra, the learned counsel appearing for the Respondent No.2 herein i.e. the original Plaintiff Ms. Reshma Nair would support the impugned order and would contend that having regard to the challenge raised in the suit, the presence of the Petitioners is not necessary. The learned counsel would contend that it is not necessary to go into the merits of the case of the Plaintiff in the suit whilst considering the application for impleadment filed by the Petitioners. The learned counsel sought to place reliance on the judgment of the Apex Court reported in (1992) 2 SCC 524 in the matter of Ramesh Hirachand Kundanmal v/s. Municipal Corporation of Greater Bombay and others. The learned counsel would therefore contend that the order passed by the Trial Court rejecting the Chamber Summons filed by the Petitioners for their impleadment in the suit need not be interfered with.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. The question is whether the Petitioners are

entitled to be impleaded in the suit in question. The Chamber Summons filed by the Petitioners is one under Order I Rule 10 of the Code of Civil Procedure. It is well settled that a party can be impleaded in the suit if either it is a necessary or a proper party. It is in the said context that the present Writ Petition would have been adjudicated upon. It is an undisputed position that the Petitioners are the owners of the building in question and that the Plaintiff is their erstwhile tenant as the decree of eviction has been passed against the Plaintiff, which decree has not been interfered with as the application filed by the Plaintiff for setting it aside has been rejected. It is also an undisputed position that the action has been taken by the MCGM in the matter of unauthorized construction by issuing stop work notice pursuant to the complaint made by the Petitioners on 24/12/2013 in which complaint they have stated the relevant antecedent facts in the matter of decree being passed against the Plaintiff etc. It is well settled that a proper party is one whose presence is necessary for a complete and proper adjudication of the suit, and a necessary party is one without whose presence the suit cannot be proceeded with. If the said yard-stick or the principles are applied, to the facts of the present case where the Petitioners are undisputedly the landlords of the premises and who have also complained against the unauthorized construction carried out by the Plaintiff, the Petitioners, if not a necessary party, can be said to be a proper party to the suit whose presence would be necessary for the complete and proper adjudication of the suit.

10 It is not necessary for this Court to go into the merits of the case of the Petitioners in so far as the unauthorized construction is concerned. However, from the report of the MCGM it appears that the MCGM had found the construction put up by the Plaintiff to be an unauthorized construction. It is also required to be borne in mind that the Petitioners are the landlords and ultimately if any untoward incident or accident happens on account of the stability of the building, the Petitioners would be held responsible for the same. Though the aspect as to whether the Plaintiff has obtained ad-interim order on the basis of the documents which are questionable need not be gone into by this Court, prima facie it appears that there is some substance in the said allegation made by the Plaintiff, it is for the Trial Court to go into the said aspect. However, for the reasons afore-stated the Trial Court has erred in rejecting the Chamber Summons on the ground that it is for the Plaintiff to prove whether the construction is unauthorized. The Trial Court even on a bare minimum inquiry if it had conducted would have seen that the permission which was granted by the MCGM was for the repair of the roof, but the work which is carried out appears to be contrary to the permission granted by the MCGM.

11 In so far as the judgment of the Apex Court in *Kundanmal's* case (supra) is concerned, the facts in the said case were that a notice under Section

351 of the Municipal Corporation Act had been issued to the licensee of the lessee on the plot on which the petrol pump in question was being run. The notice was issued in respect of two chattels the construction of which was allegedly carried out unauthorizedly. The licensee had filed a suit challenging the notice in which the lessee had made an application for impleadment. The said application was rejected on the ground that no prejudice would be caused to the lessee if the said chattels were demolished. The Apex court held that the presence of the lessee was not required for adjudication of the suit as the lessee was neither a necessary nor a proper party to the suit.

In the light of the facts of the present case where it is undisputed that the Petitioners are the landlords and have a eviction decree in their favour passed against the Plaintiff, as also considering the fact that it is the Petitioners who have complained to the MCGM against the said unauthorized construction of which cognizance was taken by the MCGM, the judgment of the Apex Court would have no application.

12 In my view, therefore, the Trial Court has rejected the Chamber Summons on an erroneous premise that it is only for the Plaintiff to prove whether the structure is authorized or unauthorized thereby totally overlooking the fine delineation between a proper and a necessary party. In that view of the matter the impugned order is required to be quashed and set

aside and is accordingly quashed and set aside. The Chamber Summons No.529 of 2014 would accordingly stand allowed. The Plaintiff would be required to join the Petitioners as party Defendants to the suit in question. Amendment to be carried out within three weeks from date and amended copy of the plaint to be served on the Petitioners. The Petitioners to file their written statement within the time that would be stipulated by the Trial Court. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]