

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6242 OF 2015**

Gayatri Surve

..Petitioner

Vs.

Divakar Vishwanath Surve & Ors.

..Respondents

**WITH
WRIT PETITION NO.6240 OF 2015**

Satyawati Dattaram Narvekar

..Petitioner

Vs.

Divakar Vishwanath Surve & Ors.

..Respondents

Mr. Vaibhav Sugadare a/w Mr. Amit Potnis for the Petitioner in both the Petitions

Mr. Raj Patel i/b Mr. Mohan P Patel for the Respondents in both the Petitions

CORAM : R. M. SAVANT, J.

DATE : 11th DECEMBER, 2015

P.C.

1 The above Petitions taken exception to the order dated 10-11-2014 passed by the Appellate Bench of the Small Causes Court, by which order the applications Exhibit 12 and Exhibit 20 filed by the Appellant i.e. the Respondent No.1 herein came to be allowed and the Petitioners in the above

two Petitions were permitted to be impleaded as Defendant Nos.4 and 5 in the Suit in question.

2 The Suit in question being RAE & R Suit No.254/364 of 2006 has been filed seeking possession of the suit premises and for recovery of Rs.63,499.24 on account of arrears of rent and permitted increases. The Defendant No.1 was the tenant occupying the suit premises. The said Suit was preceded by R.A.E. Suit No.463 of 1993 in which consent decree came to be passed in view of the settlement between the landlord who is the present Appellant and the Respondent No.1 tenant. In terms of the said consent decree, the Respondent No.1 was to be handed over a flat in the new construction which was put up in place of the old structure wherein the tenanted premises were located. The Respondent No.1 was accordingly handed over possession of the flat in the new construction. However, on the ground that the tenants has breached the consent decree in the matter of not making payment of rent and the increases, that the instant Suit came to be filed by the landlord i.e. the Respondent No.1 herein. It appears that after the possession was handed over, the society has been registered in which society the tenant has become member and it seems that a conveyance has also been granted to the society. It is in the background of the aforesaid facts that the Trial Court dismissed the instant Suit by judgment and order dated 28-6-2010. The Trial Court whilst dismissing the Suit has observed that since there is no relationship between the landlord and

tenant between the Plaintiff and the Defendant No.1 in view of the events which have been adverted to hereinabove, the Suit could not be entertained.

3 Against the judgment and order dated 28-6-2010 passed by the Trial Court dismissing the Suit, the Respondent No.1 landlord filed an Appeal being Appeal No.3 of 2011. It appears that during the pendency of the said Appeal, the Defendant Nos.2 and 3 to the Suit who were in exclusive possession of the suit premises parted with possession of the suit premises in favour of the Defendant Nos.4 and 5 i.e. the present Petitioners, which triggered of the filing the instant applications Exhibits 12 and 20 for impleadment of the Defendant Nos.4 and 5 as the Defendants to the Suit. In the schedule to the amendment application paragraph 8(a) which the Plaintiff wants to incorporate in the plaint has been reproduced. In the said paragraph 8(a), it has been stated that the Defendant No.4 has been joined as party Defendant to the Suit for obtaining relief of possession of the suit premises.

4 The said applications were opposed to by filing a reply and the applications were sought to be opposed on the touchstone of the facts which have been mentioned hereinabove namely that the tenants have become owners of the premises which have been allotted to them in the new construction that a society has been registered and that a conveyance has also been executed in favour of the society and therefore the impleadment of the

Defendant Nos.4 and 5 was not necessary.

5 The Appellate Court considered the said applications and has by the identical orders dated 10-11-2014 has allowed the same. The Appellate Court has referred to the antecedent facts which have been narrated hereinabove which inter alia include the fact that the Defendant Nos.4 and 5 having acquired premises from the Defendant Nos.2 and 3, pending the Appeal. The Appellate Court has therefore observed that though the proposed Respondents are not necessary parties to the Suit they are proper parties and such an amendment is necessary to avoid multiplicity of proceedings. As indicated above it is the said order dated 10-11-2014 which is taken exception to by way of the above Petition.

6 Heard the Learned Counsel for the parties. The Learned Counsel would urged contentions against and for the Petitioners being impleaded in the Appeal in question. In my view having regard to the fact that the Petitioners i.e. the Defendant Nos.4 and 5 have entered into a transaction that the Defendant Nos.2 and 3 pending the Appeal in the year 2013 their presence is necessary for an effectual adjudication of the Appeal, no fault therefore can be found with the findings of the Appellate Bench of the Small Causes Court that the Defendant Nos.4 and 5 may not be necessary parties who are proper parties to the Suit whose presence is necessary for an effectual adjudication of

the Appeal. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

7 Needless to state that the contentions of the parties on merits are kept open for being urged before the Appellate Bench of the Small Causes Court.

[R.M.SAVANT, J]