

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5066 OF 2015

Naozar Feroz Irani (Deceased) .. Petitioner
-Versus-
Gopaldas Vasudev & Co. & Ors. .. Respondents
Mr.Jaydeep Deo for petitioners

CORAM : M.S.SONAK, J.

DATE : 23rd July 2015.

P.C.

1] Rule.

2] On 10th June 2015 notice was issued to respondent No.32, upon whose application at Exh.230 the impugned order dated 1st April 2015 came to be made by the learned Small Causes Court (Trial Court). In the notice it was made clear that the matter may be heard and disposed of finally at the stage of admission.

3] Mr.Deo, learned Counsel for the petitioner states that service has been effected upon respondent No.32 and necessary affidavit of

service has also been filed.

4] The petitioner in this case had instituted a suit against Gopaldas Vasudeo and Company, alleging breach of the terms of lease and seeking restoration of possession of suit property. The allegation in the plaint is that the said Gopaldas Vasudeo and company, in breach of the terms of lease, has constructed a building upon the suit premises and, thereafter, sold the same. During the pendency of the suit, the trial court had permitted impleadment of some of the purchasers of the apartments in the building so constructed. The trial court has also permitted impleadment of cooperative society which claims to be the owner of the building so constructed.

5] At the stage when the evidence in the suit was being recorded, one Mr.Mohammed Akbar Amin Akhtar and another vide Exh.218-B applied for impleadment in the suit, inter alia, on the ground that they have acquired some interest in one of the apartments in the aforesaid building. The trial court by its order dated 28th November 2014 rejected the said application at Exh.218-

B by observing thus:-

“6. Heard both the learned Advocates at length, gone through the cited authority Exh.221. There cannot be any dispute in respect of the ratio laid down by the Hon'ble Superior Courts. The gist of the precedent is that earlier times, before amendment of 1999, the court has to see the locus standi of the applicant/petitioner or intervenor who wants to implead them or made a party to the suit showing their interest or right or title in the subject matter. Having interest even then they cannot made party under Order 1 Rule 10 of Civil Procedure Code as the plaintiff is a person who has sweet choice (dominus litus) to decide against whom he wants to fight. However, as per the precedent laid down by the Hon'ble Apex Court, the only point is to be considered while deciding the application taken out under Order 1, Rule 10 of the Civil Procedure Code, is that if in the absence of the applicant intervenor, if the suit is tried and disposed off, whether interveners rights can be prejudice? So far as, the facts of the present matter considered the present suit was initially filed by the plaintiffs against defendant No.1 who is the lessee and, thereafter, subsequently, defendants No.2 to 31 are joined in the array of the defendant. Even if, it is the fact that the applicants have right in the Flat No.1-B, Ground Floor is considered, it is not sufficient to allow application. According to the applicants, the defendant No.31 Society is party who is the owner of the land and building. Therefore, the society can very well protect the interest of the applicants who has also filed its written statement. Therefore, the rights of the applicants are well protected through the society who has filed its written statement vide Exh.202 dated 8.3.2014. Society has been recently made party defendant. Moreover, it cannot be overlooked that though the application is dated 21st April 2014 it has been not pointed out either in the application or during the submission, why the

application has not been tendered or filed in the court when it has been taken out or tendered on 10.10.2014. Prima facie there is force in submission that it shows the malafide and ill intention of the applicants by not taking out the application promptly.”

6] Mr.Deo, learned Counsel for the petitioner states that the order dated 28th November 2014 has till date, not been set aside.

7] The respondent No.32, by an application at Exh.230, when the suit is at advanced stage, applied for impleadment on the ground that she had purchased Flat No.6 in the aforesaid building from defendant No.10 in the suit in the year 2004. It is pertinent to note that even defendant No.10 came to be impleaded in the suit after its institution. By the impugned order dated 1st April 2015, the trial court has not only allowed the impleadment of respondent No.32 but further granted leave to respondent No.32 to file her written statement in the matter.

8] Mr.Deo, learned Counsel for the petitioner submitted that the suit which was originally instituted in the year 1996, has reached a fairly advanced stage. The plaintiffs' evidence has been concluded in the year 2011 and on behalf of the defendants, examination of

almost six witnesses stands concluded. At this stage, the learned Counsel submits, that there was no question of permitting impleadment of respondent No.32 and further granting of leave to respondent No.32 to file her written statement. Further, Mr.Deo submitted that in the light of the order made on 28th November 2014, no impleadment at all should ever have been permitted.

9] Despite liberty the respondent No.2 has not appeared in the matter. Upon consideration of the submission of Mr.Deo and perusal of the record, in my judgement, the impugned order dated 1st April 2015 is required to be set aside. At the outset, the impugned order takes no cognisance whatsoever of the earlier order dated 28th November 2014 made in almost identical circumstances. The only difference if at all, in the two instances is that the applicant in the application Exh.218-D had claimed interest in Flat No.1B of the said building on the basis of an agreement for sale, whereas, the respondent No.32 claims interest in Flat No.6 on the basis of a sale deed. In the context of decision on the issue of impleadment, this distinction is hardly material. As noted above, the trial court in its order dated 28th November 2014 has already held that defendant

No.31 – society is already a party and it is the society which claims ownership to the land and the building can very well protect the interest of persons claiming any right or interest in the apartments in the said building. Without any consideration of such observations, the trial court could not in, virtually identical circumstances, have made the impugned order.

10] That apart, even otherwise, there was no justification to permit impleadment and grant liberty to file written statement at such a belated stage. The real grievance of the petitioner is against Gopaldas Vasudeo & Company. No doubt, in the meanwhile the trial court had permitted some persons claiming interest in the apartments to be impleaded as parties. Interest, if any, of the apartment holders is, therefore, taken care of by the society. Mr.Deo is right in his submission that if every person who claims interest in each of the apartment in the building is permitted to be impleaded as parties and further liberty is granted to such parties to file their written statement at this belated stage, then, that by itself, will frustrate the progress of petitioner's suit instituted way back in the year 1996. The presence of such persons is not at all necessary

for effective determination of the issues raised in the suit.

11] There is also no explanation on the part of the respondent No.32 as to why the application for impleadment was made at this belated stage when it is her case that the apartment No.6 was purchased by her from defendant No.10 way back in the year 2004. At a stage where the evidence of the plaintiffs is concluded in the year 2011 and evidence of no less than six witnesses on behalf of the defendants is also concluded, there was no justification to make the impugned order. The impugned order is clearly in excess of jurisdiction.

12] Accordingly, rule is made absolute in terms of prayer clause (b) and further the trial court is directed to dispose of the R.A.E.Suit No.902/1837 of 1996 as expeditiously as possible and in any case within a period of eight months from the date of production of authenticated copy of this order.

(M.S.SONAK, J.)