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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 685 OF 2014

Madhusudan Lakhmidas Bhanushali (HUF)
through its Karta and Manager
Madhusudan Lakhmidas Bhanushali .. Applicant

Vs.

Dalpatraj Pukraj Jain and others .. Respondents

Mr.Yahyah i/b Mr.Mayur Jariwala, Advocate for the Applicant.

CORAM : R. G. KETKAR, J.
DATE : 06th JULY, 2015

P.C. :

Heard Mr. Yahyah, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), original defendant No.3 has challenged the judgment and order dated 27/03/2014 passed by the learned Judge, City Civil Court, Greater Mumbai in Chamber Summons No. 1947 of 2013 in Suit No. 3378 of 2010 (High Court Suit No.782 of 2010). By that order, the learned trial Judge allowed the Chamber Summons taken out by the original plaintiffs for amending the plaint by substituting plaintiff No.1-Dalpatraj Pukhraj Jain in the capacity of Chief Promoter of the Society as well as in his personal capacity as per the schedule annexed thereto and all

incidental places in the proceedings.

3. In support of this Application, Mr. Yahyah strenuously contended that S.C.Suit No. 3378 of 2010 was filed by Mr.Dalpatraj Pukhraj Jain as Chief Promoter of Shwesh Co-operative Housing Society (proposed) (for short 'Society') as plaintiff No.1 and as a plaintiff No.2 as well for declaration that letter dated 16/02/2010 issued by the defendants is bad in law, illegal and not binding upon the plaintiff; for declaration that agreement dated 12/08/2002 is valid, subsisting and binding upon defendants and the defendants are bound to specifically perform their obligations under the said agreement including execution of deed of assignment in favour of the plaintiffs or their nominees, among other prayers. He submitted that during the pendency of the Suit, defendant No.3 took out Notice of Motion praying interalia for declaring that plaintiff No.1 is not entitled to file Suit in the representative capacity as a Chief Promoter of alleged Society under Order 7 Rule 4 of C.P.C. and consequently, Suit is liable to be dismissed; for declaration that plaintiff No.2 is not entitled to file Suit as he has no locus standi under Order 7 Rule 11 of C.P.C. and consequently, the Suit and proceedings thereunder are liable to be dismissed. He submitted that though this Motion is taken out in the year 2011, without deciding that Motion, the learned trial Judge, by the impugned order has decided the Chamber Summons which has virtually resulted in dismissal of the Motion. He further

submitted that in the proposed amendment, the plaintiffs have claimed that the Society is registered on 18/04/2012. Aggrieved by that registration, defendant No.3 has preferred Appeal and the said Appeal is pending. For all these reasons, he submitted that the impugned order cannot be sustained and is liable to be set aside.

4. As noted earlier, earlier Suit was instituted by plaintiff No.1-Dalpatraj Pukhraj Jain in the capacity of a Chief Promoter of the Society as also in his individual capacity as plaintiff No.2. The plaintiff's case is that during the pendency of the Suit filed in the year 2010, Society is registered having registration No. MUM/WF-N/HSG/(TC)/9146/2012-13/YEAR-2012 on 18/04/2012. In view of subsequent development pending the Suit, plaintiffs took out Chamber Summons for amending the plaint by substituting the plaintiffs as per Schedule appended to the Chamber Summons. In paragraph 4, the learned trial Judge has considered this subsequent development pending the Suit and accordingly allowed the Chamber Summons. Mr.Yahyah submitted that aggrieved by the registration of the Society on 18/04/2012, defendant No.3 has preferred Appeal and the same is pending. However, no interim order is produced staying the registration of the Society. Having regard to the fact that the Chamber Summons is taken out in view of subsequent development, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence,

Application fails and the same is dismissed. However, it is made clear that the learned trial Judge will decide the Motion taken out by defendant No.3 uninfluenced by the observed made herein.

5 At this stage, Mr.Yahyah states that in pursuance of the impugned order, the plaintiffs have carried out amendment in the Suit. Defendant No.3 is at liberty to file additional written statement within 4 weeks from today. Order accordingly.

(R. G. KETKAR, J.)