

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6378 OF 2013**

Hasmukh N. Malkan

..Petitioner

Vs.

Municipal Corporation of Greater Mumbai & Ors

..Respondents

Mr. Mayur Khandeparkar with Ms Rupal Narielwala i/b M/s. Gordhandas & Fozdar for the Petitioner

Ms Pallavi Thakur for the Respondent No.1

Mr. Dinesh Shah for the Respondent Nos.6B and 7B

Mrs. A.S.Malvankar for the Respondent Nos.12, 14, 19, 20 and 36

CORAM : R. M. SAVANT, J.

DATE : 13th MARCH, 2015

P.C.

1 The order dated 17-1-2013 passed by the Trial Court which is recorded in the roznama of the said day whereby the Trial Court has ordered that the Suit can be continued by the Plaintiff in respect of one of the Defendants at the choice of the Plaintiff and for rest of the Defendants the Plaintiff can file a separate Suit, is taken exception to by way of the above Petition.

2 The reasons for the Trial Court so observing in the said order dated 17-1-2013 is the fact that the Trial Court has reached a conclusion is that there is a misjoinder of causes of action. This conclusion of the Trial Court is based on the fact that the Defendants are having independent premises and the prayer of the Plaintiff is that the Municipal Corporation should be directed not

to grant repairs permission. The Trial Court further observed that there would be independent affidavits in respect of each of the premises by the Plaintiff and each of the Defendants. The Trial Court has therefore observed that this would all result in difficulties being created in the adjudication of the Suit as there would be a mess created. The Trial Court has further observed that some of the Defendants have also expired and their heirs are also not brought on record. The factum of some of the Defendants having already expired on the date of the filing of the Suit has also been recorded in the said order dated 17-1-2013.

3 Thought the Suit as originally filed contains prayer clauses (a) and (b) that is to restrain the MCGM to grant development permission to the Defendant Nos.2 to 39, by amendment carried out to the suit, which was pursuant to the report of the Court Commissioner prayer clause (c)(i) to (c)(iii) have been incorporated in the plaint. By the said prayers, the relief that the MCGM be directed to take action pursuant to the report of the Court Commissioner and thereafter demolish the unauthorised construction, is sought. At this stage it is required to be noted that the Suit is of the year 1992 and has not progressed till this date which fact the Trial Court attributes to the fact that the adjudication of the Suit having regard to the relief sought therein against a number of Defendants would be not possible as there is misjoinder of causes of action in the said Suit.

4 The Learned Counsel appearing on behalf of the Petitioners seeks to place reliance on Order II Rule 3 as also Order II Rules 6 and 7 of the Civil Procedure Code in support of his contention that such Suit against the number of the Defendants having same cause of action can be prosecuted.

5 In my view, having regard to the fact that the allegations made against each of the Defendants is of unauthorised construction being carried out. The observations made by the Trial Court that evidence in respect of each of the Defendants would be different, both for the Plaintiff as well as the Defendants, cannot be faulted with. The finding of the Trial Court that there is a misjoinder of causes of action can therefore be said to be unexceptional in the facts of the present case. In my view, therefore, the course of action that is propounded by the Trial Court in the impugned order dated 17-1-2013, cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. However, if the Plaintiff chooses to file separate Suit against each of the Defendants, the fact that the Plaintiff had filed the instant Suit in question wherein pursuant to the impugned order the said Suits are required to be filed, can obviously be urged by the Plaintiff.

[R.M.SAVANT, J]