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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 360 OF 2015

Ajay Ramavatar Pathak	.. Applicant
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

**ALONG WITH
CIVIL REVISION APPLICATION NO. 361 OF 2015**

Arun Ramavatar Pathak	.. Applicant
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

**ALONG WITH
CIVIL REVISION APPLICATION NO. 362 OF 2015**

Pinky Amit Pathak and others	.. Applicants
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

CIVIL REVISION APPLICATION NO. 363 OF 2015

Ramavatar Jagatnarayan Pathak	.. Applicant
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

**ALONG WITH
CIVIL REVISION APPLICATION NO. 364 OF 2015**

Ramavatar Jagatnarayan Pathak	.. Applicants
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

**ALONG WITH
CIVIL REVISION APPLICATION NO. 365 OF 2015**

Sindhumati Ramavatar Pathak	.. Applicants
Vs.	
Municipal Corporation for Brihanmumbai and others	.. Respondents

Mr.Diwakar Dwivedi, Advocate for the Applicant.
Ms.Pallavi Thakar, Advocate for Respondent No.1- B.M.C.
Mr.D.A.Nalawade, Senior Counsel a/w Mr.Abhishek Bhaduri,
Advocate for Respondent No.2 – S.R.A.

**CORAM : R. G. KETKAR, J.
DATE : 16th JULY, 2015**

P.C. :

. Heard Mr.Diwakar Dwivedi, learned Counsel for the applicant, Ms.Pallavi Thakar, learned Counsel for respondent No.1 and Mr.D.A.Nalawade, learned Counsel for respondent No.2 at length.

2. By these Applications under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original plaintiffs have challenged the judgment and order dated 31/07/2014 passed by the learned Judge, City Civil Court (Borivli Division), Dindoshi in Chamber Summons filed by the plaintiff under Order 6 Rule 17 of C.P.C. for amending the plaint. The applicants have also challenged the judgment and orders dated 26/03/2015 passed by the learned Judge, City Civil Court (Borivli Division), Dindoshi dismissing Review Petitions filed by the plaintiffs. Since common questions of

law and facts arise in these Applications, the same can conveniently be disposed of by this common order. For the purpose of appreciating the controversy raised between the parties, facts from Civil Revision Application No. 365 of 2015 are taken into consideration.

3. In support of this Application, Mr.Dwivedi submitted that applicant, hereinafter referred to as plaintiff has instituted Suit namely L.C. Suit No 2501 of 2004 interalia praying for direction to defendants No. 3 & 4 to keep the plaintiff in vacant and peaceful possession of the premises in the newly constructed building on the plot of land bearing Survey No. 8(Part) having corresponding C.T.S. No. 515-A (Part) now forming a part of Final Plot No. 14-A and 14-B of T.P.S II Borivali situate at Shukur Wadi, M.G.Road, Borivali (East), Mumbai 400 066 as per agreement dated 29/08/2003; for perpetual injunction restraining defendants No. 3 & 4 from i)creating third party right, title interest in the permanent alternate accommodation proposed to be granted and ii) from dispossessing and selling any commercial premises to persons whose names are not mentioned in the annexure and granting more than one room to any dweller under some rehabilitation scheme in lieu of premises, among other prayers.

4. Mr.Dwivedi submitted that in annexure II certified by the Competent Authority, name of applicant appears at serial No. 101. In other words, applicant is found eligible as per DCR/33(10)

of the Development Control Regulations for Greater Bombay, 1991.

4. Mr. Dwivedi submitted that during the pendency of the Suit, plaintiff took out Chamber Summons No. 439 of 2013 for amending the plaint as per the schedule annexed thereto. By the proposed amendment, plaintiff wants to bring on record subsequent events that took place during the pendency of the Suit. By the impugned order, the learned trial Judge partly allowed the Chamber Summons by permitting the plaintiff to delete the name of defendant No.4 and incorporate new name of defendant No.4 as defendant No.4 has been registered as Sai Siddhivinayak Co-operative Society. The learned trial judge also allowed plaintiff to amend the prayer clauses of plaint as per the schedule. However, rest of the proposed amendment is rejected.

5. Mr.Dwivedi submitted that unless the pleadings are amended, plaintiff will not be in a position to lead evidence. Unless the foundation is laid in the plaint, the Court will not be in a position to consider and grant amended reliefs as allowed by the trial Court. He, therefore, submitted that the learned trial Judge ought to have allowed the Chamber Summons in its entirety rather than partly allowing. He further submitted that plaintiff took out Review Petition seeking review of the order dated 31/07/2014. The learned trial Judge rejected Review Petition on the ground that plaintiff has not come with the case that at the time of deciding the Chamber

Summons, despite due diligence, she could not produce material evidence. In other words, the learned trial Judge held that plaintiff did not make out any ground for review under Order 47 of C.P.C. He, therefore, submitted that the impugned orders are liable to be set aside thereby allowing the Chamber Summons.

6. On the other hand, Mr.Nalawade supported the impugned orders. He submitted that perusal of proposed amendment shows that plaintiff intends to amend the plaint on the basis of the assertions made in the written statement. The plaintiff intends to explain some facts which are denied by the defendants in the written statement. He, therefore, submitted that the learned trial Judge rightly rejected the Chamber Summons as also review petition and no case is made out for invocation of powers under Section 115 of C.P.C.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge has permitted the plaintiff to delete original defendant No.4 and incorporate new name of defendant No.4 as defendant No.4 has been registered as Sai Siddhivinayak Co-operative Housing Society. The learned trial Judge has also permitted the plaintiff to amend prayer clauses of the plaint as per schedule. With the assistance of the learned Counsel appearing for the parties, I have perused the

proposed amendment as set out in paragraphs 11(a) to 11(o) after paragraph 11 of the plaint. Though the plaintiff claims that these are subsequent events pending the Suit, the learned trial Judge after considering the proposed amendment observed in paragraph 5 that plaintiff wants to amend the plaint on the basis of defendant's reply/written statement. The plaintiff intends to explain some facts which are denied by the defendants in their written statement. The proposed amendment is nothing but like evidence which plaintiff will have to lead on merits of the case. In other words, the learned trial Judge was of the view that proposed amendment is in the nature of evidence in respect of which plaintiff will have to lead during the trial. I do not find that the learned trial Judge committed any error in that regard. It appears that in the written statement, defendant No.3 disputed signature of the officer of defendant No.2. appearing on annexure II. Defendant No.3 is disputing signature on annexure II. As against this, the plaintiff asserts otherwise. In view thereof, it is for the parties to substantiate their case by leading the evidence.

8. In view thereof, I do not find that any case is made out for invocation of powers under Section 115 of C.P.C. Hence, applications fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)