

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7938 OF 2015**

**Roshanben Firoz wd/o
late Firoz A Rehman**

..Petitioner

Vs.

Diu Municipal Council & Anr.

..Respondents

Mr. S. R. Nargolkar i/b Ms Meenakshi Sakhare for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 24th AUGUST, 2015**

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 20-3-2014 passed by the Learned Civil Judge, Senior Division, Diu, by which order, the application Exhibit 13 filed on behalf of the Respondent No.2 came to be allowed and the Respondent No.2 is directed to be impleaded as a party Defendant to the Suit in question. The Suit in question being Regular Civil Suit No.3 of 2014 has been filed by the Petitioner by taking exception to the show cause notice dated 26-12-2013 issued by the Respondent No.1 herein, asking the Petitioner to show cause as to why the structure in question should not be demolished.

2 It is required to be noted that in the plaint in paragraph 9, it has been averred by the Plaintiff i.e. the Petitioner herein that she is not the tenant of the so called Laxmiben and that if Laxmiben claims, she should take proper

action in the Competent Court or authority. In the said Suit, the instant application Exhibit 13 came to be filed by the Respondent No.2 as Power of Attorney holder of the original owner Laxmiben Manmohansinh. The application is founded on the fact that the Applicant recently came to know of the filing of the Suit and has immediately thereafter filed the instant application. The said application was replied to on behalf of the Petitioner and in the said reply, the Power of Attorney was questioned as also the factum that the said Laxmiben Manmohansinh is neither a necessary nor a proper party as the Suit is essentially against the notice issued by the Respondent No.1 Municipal Council. The said application was considered by the Trial Court and has been allowed by the impugned order.

3 The Trial Court has observed that the suit property is owned by the Applicant Laxmiben Manmohansinh and that the notice has been issued by the Respondent No.1 Municipal Council pursuant to the application made on behalf of the said Laxmiben. The Trial Court thereafter has referred to the Judgment of the Apex Court in the matter of **Vidur Impex and Traders Pvt Ltd and Ors. Vs. Tosh Apartments Pvt Ltd & Ors.**¹ wherein the Apex Court has carved out the distinction between a necessary and a proper party in the context of Order 1 Rule 10 of the Civil Procedure Code. The Trial Court has thereafter allowed the instant application Exhibit 13 for impleadment.

1 AIR 2012 Supreme Court 2925

4 The Learned Counsel appearing for the Petitioner would reiterate the grounds urged by the Petitioner before the Trial Court namely that the said Laxmiben is neither a necessary nor a proper party, that the Power of Attorney does not cover the suit property and that the same being not registered with the Collector of Diu, the Power of Attorney holder would not be entitled to file an application for implementation.

5 In so far as the said aspects are concerned, the same have been dealt with by the Trial Court in the impugned order. The Trial Court has adverted to the fact that the Power of Attorney has been executed in U.K. In the High Commission and in so far as authentication of the Power of Attorney before the Collector is concerned, the Trial Court has observed that the same is merely a formal defect and can be cured. The Trial Court has therefore referred the properties which are mentioned in the Power of Attorney and has proceeded to adjudicate upon the said application.

6 In my view, having regard to the fact that implicit in the averment in paragraph 9 of the plaint, there is an acceptance by the Plaintiff that the said Laxmiben Manmohansinh has something to do with the property in question as also having regard to the fact that it is on the application made on behalf of the said Laxmiben that the notice came to be issued by the Respondent No.1 Municipal Council as also having regard to the distinction

between necessary and proper parties, in my view, if the said Laxmiben is not a necessary party she is at least a proper party to the Suit whose presence would facilitate the proper adjudication of the Suit. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]