

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7572 OF 2014

Shaikh Mohammed Harun : Petitioner
versus
The Municipal Corporation for
Greater Mumbai and ors. : Respondents

Mr. Kapil P Shetye for the Petitioner.
Mrs. M R Bhoir for the Respondent No.1
Mr. Javed Rashid Patel for the Respondent Nos.2 to 5.

CORAM : R. M. SAVANT, J.
DATE : 28th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23/7/2014 passed by the learned Judge, City Civil Court, Greater Bombay, by which order the Chamber Summons being No.1034 of 2012 filed by the Respondent Nos.2 to 5 came to be allowed and resultantly the said Respondents were directed to be impleaded as party Defendants to the suit.

2 The suit in question being L.C. Suit No.211 of 2012 has been filed by the Petitioner i.e. the original Plaintiff questioning the notice issued under Section 351 of the Mumbai Municipal Corporation Act. The allegation in the said notice is of unauthorized construction carried out by the Plaintiff in a house-galli. The Plaintiff claims that the suit property which is the subject matter of the notice is bearing Shop No.1A.

3 The Respondent Nos.2 to 5 herein who are the Applicants claim to be the tenants of Shop No.1 and it is their case that the Plaintiffs wrongly claims that his shop bears Shop No.1A on the basis of the assessment record. It is the case of the Respondent Nos.2 to 5 that since the Plaintiff has carried out unauthorized construction in the house-galli, which is adjoining to Shop No.1, and since ultimately if the re-development process is initiated, prejudice would be caused to the Respondent Nos.2 to 5, if the Plaintiff is ultimately held entitled to allotment of the permanent alternate accommodation, that the Respondent Nos.2 to 5 have sought their impleadment in the suit.

4 The Trial Court has considered the said application and having regard to the fact that the Mumbai Municipal Corporation had issued the notice to the Plaintiff for removal of unauthorized construction and having regard to the fact that the rights of the Applicants would be affected, allowed the said Chamber Summons.

5 The learned counsel appearing for the Petitioner i.e. the original Plaintiff sought to question the impugned order dated 23/7/2014 on the ground that the Respondent Nos. 2 to 5 herein have nothing to do with the subject matter of the suit which is the notice issued under Section 351 of the Mumbai Municipal Corporation Act and their impleadment is not necessary. In

my view, it is not possible to accept the said contention. It is well settled that a party can be impleaded to the suit if either it is a necessary or a proper party. In the facts of the present case where adjudication of the suit would have an impact on the rights of the Respondent Nos.2 to 5 herein, the order passed by the Trial Court allowing their impleadment cannot be found fault with, though the Respondent Nos.2 to 5 may not be necessary parties to the suit but they are proper parties whose presence would be necessary for adjudication of the suit.

6 A reading of the impugned order discloses that the Trial Court has dealt with only the relief in so far as impleadment sought vide Chamber Summons No.1034 of 2012 is concerned, as there are no observations in respect of the relief sought by way of prayer clause (b). The present impugned order would have to be restricted to the relief sought vide prayer clause (a). The learned counsel appearing on behalf of the Respondent Nos.2 to 5 fairly accepts the said position.

7 In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]