

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

WRIT PETITION (STAMP) NO.21737 OF 2015

The Life Insurance Corporation of India .. Petitioner

Versus

Mohan Vishnu Satardekar and others .. Respondents

**Mr. Harihar Bhavé a/w Rupa Bhavé, Aarti Kulkarni and Rohan Kusnur
i/by Bhavé & Co., for the Petitioner.**

Mr. Avinash Fatangare, for the Respondent No.1 to 5.

**Mr. Gautam Bhagwat i/by Divekar Bhagwat & Co., for the Respondent
No.6.**

CORAM : R.M. SAVANT, J.

DATE : 16th SEPTEMBER, 2015

PC.

1. The order dated 03.07.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, allowing the Chamber Summons No.2183 of 2014 filed by the Respondent No.6 herein for its transposition as the Plaintiff No.6 came to be allowed is taken exception to by way of the above Petition. The suit in question is filed by the Respondent Nos.1 to 5 herein and the principal relief sought is the conveyance of the suit property which is mentioned in the plaint. The Respondent No.6 herein is the society of the tenants/occupants of the buildings which comprise the suit property. The application of the Respondent No.6 for its impleadment

came to be allowed in the year 2006 and the Respondent No.6 was impleaded as a Defendant No.2 to the suit. Hence, in so far as the impleadment of the Respondent No.6 as a party to the suit though in the capacity of the Defendant, the same has taken place as long back in the year 2006, thus underlying the fact that the Trial Court which considered the application for its impleadment was of the view that the presence of the Respondent No.6 as a party to the suit was necessary for the complete and effectual adjudication of the suit.

2. The instant Chamber Summons has been filed by the Respondent No.6 for its transposition as Plaintiff No.6. As indicated above, the Respondent No.6 is the society of the tenants/ occupants of the buildings which comprises the suit property which suit property belongs to the Petitioner i.e. Life Insurance Corporation of India. The instant application i.e. Chamber Summons is founded on the averment which has been made in the Written Statement filed on behalf of the Petitioner i.e. Defendant No.1. The said paragraph which is paragraph 22 for the sake of ready reference is reproduced hereinunder :-

“22. In the premises aforesaid these Defendants say that the Plaintiffs are not entitled for any relief for the reasons set out herein above and the Defendants may execute the deed of the property with the co-operative society of the sitting tenants on terms and conditions to be negotiated

with the said sitting tenants' society as and when it is formed and as such the suit be dismissed with costs.”

(emphasis supplied)

3. Hence, the said paragraph discloses that the Defendant No.1 has unequivocally stated that it may execute the conveyance deed of property with the co-operative society and sitting tenants on the terms and conditions to be negotiated with the said sitting tenants' society as and when it is formed. In support of the said application reliance was also placed on the letter dated 11.02.1985 of the Government of India, wherein the Managing Director of the LIC was informed that the Defendant may execute deed of the property with the proposed co-operative society of the sitting tenants. Hence, the said letter dated 11.02.1985 of the Government of India seems to be general direction which was issued to the LIC.

4. The Chamber Summons was opposed to on behalf of the Defendant No.1 on the grounds which are mentioned in the affidavit in reply and primarily on the ground that the original Plaintiffs were seeking conveyance unto themselves and not in favour of the society of the tenants/occupants. There are other grounds which in my view are not germane to the consideration of the instant Petition. The Trial Court considered the said application and by the impugned order dated

03.07.2015 has allowed the same. The Trial Court has principally relied upon the averments in paragraph 22 of the Written Statement filed on behalf of the Petitioner i.e. Defendant No.1. The Trial Court has also adverted to the letter dated 11.02.1985 of the Government of India addressed to the Managing Director of the LIC and has concluded that since the Defendant No.1 has agreed to execute the conveyance in favour of the society of tenants/ occupants the transposition of the society of the tenants i.e. the Defendant No.2 as the Plaintiff No.6 is necessary as otherwise the relief cannot be granted to the Defendant No.2 i.e. Respondent No.6 in the present Petition. The Learned Counsel appearing on behalf of the Petitioner sought to raise various contentions as regards said the transposition and also sought to reiterate the objections which are raised in the affidavit in reply filed on behalf of the Defendant No.1.

5. In my view, the said contentions cannot be accepted in view of the fact that the Respondent No.6 herein has been joined as Defendant No.2 as long back as in the year 2006 and as indicated above implicit in the said joining is acceptance of the fact that the Defendant No.2 has an interest in the subject matter of the suit in question which as indicated has been filed for conveyance of the suit property. The contentions of the Learned Counsel are also revolving around the entitlement of the Plaintiff for the relief which are sought in the suit. In my view, the said contentions

have no relevance at the present stage when the Court is only concerned with the aspect of the transposition of the Defendant No.2 as the Plaintiff No.6. The sine-qua-non for the same has to be the commonality of interest between the original Plaintiffs and the newly joined Plaintiff No.6. As indicated above, the original Plaintiffs are also members of the Plaintiff No.6 which is the society of the tenants/occupants. It is also required to be noted that out of 128 tenants/occupants of the buildings which comprise the suit property about 120 are the members of the Respondent No.6. Hence, the order passed by the Trial Court transposing the Defendant No.2 as the Plaintiff No.6 cannot be said to suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.