

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7762 OF 2013**

Ankit Developers	)	
having its registered office at	)	
Cynthiandra , 3 rd floor,	)	
Gokhale Road, North, Near	)	
Portuguese Church, Dadar (West)	)	
Mumbai 400 028	)	..Petitioner

Vs.

1 Dilip Hariya partner of Manish	)	
International,	)	
Plot No.233/B, Tauripada	)	
Dr. S.S.Rao Road, Lalbaug,	)	
Mumbai 400 012	)	
2 Municipal Corporation of Greater	)	
Mumbai, a body Corporate	)	
constituted under the MMC Act	)	
and having its head office at	)	
Mahapalika Marg, Fort, Mumbai 40001	)	..Respondents

Mr. Ajay Panicker i/b M/s Ajay Law Associates for the Petitioner
Ms Priti Shah for the Respondent No.1
Ms Pallavi Thakur for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 1st SEPTEMBER, 2015

ORAL JUDGMENT

1 Rule with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order date 15-9-2012 passed by the Learned Judge of the City Civil Court, Greater Bombay, by which order, the application being Chamber Summons No.940 of 2011 filed by the Petitioner for its impleadment in the Suit in question came to be rejected.

3 The Suit in question being S.C. Suit No.1503 of 2011 has been filed by the Respondent No.1 challenging the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short the MMC Act). The said notice alleges an unauthorised construction of ground plus first floor admeasuring 18.30 m x 19.30 m, made of brick masanory wall and A.C. Sheet roof carried out by the Plaintiff i.e. the Respondent No.1 herein. By the said notice, the Plaintiff was called upon to show cause as to why the structure should not be demolished. The Petitioner herein claims to be the assignee of the lease of the property admeasuring 14037 sq.mtrs. which covers the property on which the structure is situated. The said assignment has been executed by M/s. Voltas Limited, Bombay Silk Mills Ltd., Calico Dyeing and Printing Works, New India Mosaic & Marble Company Pvt Ltd. and Anandji Naranji & Co. in favour of the Petitioner. The Petitoner has complained against the said unauthorised construction carried out by the Plaintiff ie. Respondent No.1. The Plaintiff on acquiring knowledge of the filing of the instant Suit filed

the instant Chamber Summons No.940 of 2011 seeking its impleadment. The facts as aforesaid were stated in support of the relief claimed by way of the Chamber Summons. The said Chamber Summons was replied on behalf of the original Plaintiff and in the reply it was contented that it is not necessary to join the Applicant as party to the Suit. The Trial Court considered the said application and has by the impugned order dated 15-9-2012 rejected the said application and the rejection is on the ground that since the challenge in the Suit is to the notice issued by the MCGM, the presence of the Petitioner i.e. the Applicant is not necessary in the Suit. It was further held that since no substantial right of the Applicant would be affected, the Applicant is not required to be impleaded in the Suit. As indicated above it is the said order dated 15-9-2012 passed by the Learned Judge of the City Civil Court Bombay, which is taken exception to by way of the above Petition.

4 The Learned Counsel for the parties would make submissions for and against the Applicant being joined as a party to the Suit. The Learned Counsel for the Petitioner would contend that the Applicant being an assignee of the lease in respect of the property in question, is a party which is necessary to be joined to the Suit. On the other hand, it is the contention of the Learned Counsel for the original Plaintiff / Respondent that the presence of the Applicant is not necessary. The Learned Counsel also questions the locus standi of the Applicant for being joined as party to the Suit on the ground that the

Applicant is not the landlord.

5 Having heard the Learned Counsel for the parties, the question that is posed is whether the Applicant is required to be joined as party to the Suit. In the said context, it is required to be noted that the Applicant claims to be assignee of the lease in respect of the land in question wherein the suit structure is situated. The Applicant is also the party who has complained to the MCGM against the unauthorised construction carried out by the Plaintiff. It is acting on the said complaint that it seems the action by way of issuance of notice was taken by MCGM. The Learned Counsel for the Applicant has also tendered the letter dated 5-1-2007 of the Industrial Estates Pvt Ltd. by which letter the tenancy were attorned in favour of the Applicant. The Applicant in the capacity of now being a lessee of the property in question therefore becomes the landlord of the property in question. Since the issue in the Suit is as regards the alleged unauthorised construction carried out by the Plaintiff, the presence of the Applicant would aid in the proper adjudication of the Suit. The Applicant if not a necessary party is a proper party to the suit. Hence having regard to the well settled principles applicable to Order 1 Rule 10 of the Civil Procedure Code, the application filed by the Applicant i.e. the Chamber Summons in question was required to be allowed. The Trial Court has erred in rejecting the said Chamber Summons by the impugned order. The impugned would therefore have to be quashed and set aside and is accordingly quashed

and set aside. The Chamber Summons in turn would stand allowed. The Applicant would accordingly be impleaded as party Defendant to the Suit.

6 The Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

7 Amendment to be carried out within four weeks from date.

[R.M.SAVANT, J]