

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11109 OF 2014

Purushottam Chelwayya Shetti .. Petitioner
vs.
Atekabai Fida Husain Kachwala & Ors. .. Respondents

Mr. S. N. Chandrachood for Petitioner.
Mr. S. C. Wakankar for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 22 APRIL 2015

P.C. :-

1] On 20 March 2015, it was made clear that this petition will be disposed of at the stage of admission. In pursuance of the same, the respondents have been served and necessary affidavit of service is also filed.

2] Mr. Wakankar appears for the respondent no. 1, who is the plaintiff in Regular Civil Suit No. 533 of 2011, in which, the impugned order has been made.

3] This petition challenges order dated 10 October 2014 made by the Civil Judge, Junior Division, Pune, disallowing the petitioner's application seeking impleadment as defendant in the suit instituted by the respondent no. 1 - plaintiff against the Pune Municipal

Corporation (PMC). The suit seeks a declaration that notice dated 14 March 2011 issued by the PMC under Section 478(1) of the Bombay Provincial Municipal Corporations Act 1949 (said Act) is void and further for a permanent injunction restraining the PMC from taking any coercive action in pursuance of the notice dated 14 March 2011.

4] The notice dated 14 March 2011 pertains to the alleged illegal construction carried out by the respondent no. 1, *inter alia* on the terrace of the third floor of the building. The petitioner, is a tenant in respect of one of the premises in the said building. There is material on record, which establishes that it is the petitioner, who had made complaints to the PMC in the matter of the alleged illegal construction and its in pursuance of such complaints that the notice dated 14 March 2011 came to be issued by the PMC. The base of the petitioner's complaint was that the alleged illegal constructions directly affect the petitioner's rights, in so far as the user of tenanted premises is concerned. The learned Civil Judge, however, relying upon the decision of the Hon'ble Apex Court in the case of *Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors.*¹, has rejected the petitioner's application seeking impleadment in the suit, on the ground that the petitioner is neither a necessary nor a proper party.

1 (1992) 2 SCC 524

5] The learned counsel for the petitioner submitted that the decision in the case of *Ramesh Hirachand* (supra) was not applicable to the case of the petitioner, as the petitioner, in the present case, has direct nexus in the property, in so far as it affects his right of user of the tenanted premises. Further, the learned counsel relying upon the decisions of this Court in the case of *Milind Dattatreya Sugavkar vs. Municipal Corporation of Greater Mumbai & Anr.*² and *Chandrakant Dharma Bhonu vs. Pandurang Ramchandra Dandekar & Anr.*³ submitted that the decision of the Hon'ble Apex Court in the case of *Ramesh Hirachand* (supra) has been explained and the learned Civil Judge, in making the impugned order, has ignored such explanation. For these reasons, the learned counsel for the petitioner submitted that the impugned order is liable to be set aside and the petitioner's application at Exhibit '22' be made absolute.

6] Mr. Wakankar, the learned counsel for the respondent no. 1 - plaintiff defended the impugned order, by pointing out that there is already an eviction suit, instituted against the petitioner. Mr. Wakankar further submitted that the alleged illegal construction has no nexus whatsoever with the petitioner's tenanted premises.

2 2006 (2) Bom. C.R. 617

3 2004 (Supp. 2) Bom. C.R. 329

Accordingly, the decision of the Apex Court in the case of *Ramesh Hirachand* (supra) would squarely apply. In case, the petitioner, who is neither a necessary nor proper party as impleaded, the same will only embarrass the trial and result in unnecessary harassment to the respondent no. 1. The presence of the petitioner is not at all necessary for the purposes of effective adjudication of the issues raised in the suit and consequently there is absolutely no error of jurisdiction in the making of the impugned order.

7] Having heard the learned counsel for the parties and perused the records, in my judgment, the impugned order is required to be set aside. In the case of *Ramesh Hirachand* (supra), the Hon'ble Apex Court was concerned with the position where a notice that was issued by the Municipal Corporation, did not relate to the structure itself, but to certain chattel. Accordingly, in such circumstances the Hon'ble Apex Court held that the original lessee from the landlord had no direct nexus in that property and consequently could claim neither direct nor indirect interest in the subject matter of litigation.

8] In the present case, the petitioner has alleged that the alleged illegal constructions carried out by the respondent no. 1, directly affects the petitioner's right in so far as the user of the tenanted

property is concerned. Accordingly, it is the petitioner who lodged complaints with the PMC and its on the basis of such complaints that the notice dated 14 March 2011 came to be issued by the PMC. The suit as instituted by the respondent no. 1 seeks declaration that it is such notice dated 14 March 2011 which is null and void. In these circumstances, it cannot be said that the petitioner has no direct nexus in the subject matter of the dispute.

9] In case of *Milind Sugavkar* (supra), this Court, whilst acknowledging that the plaintiff is normally a *dominus litis* held that the Civil Courts, in exercise of powers under Order 1 Rule 10 of the CPC can always permit or direct impleadment of even a proper party whose presence is necessary for effective decision in the suit. That was a case where a society apply for impleadment in a suit where one of the flat owners had instituted a suit against the municipal corporation restraining action against alleged illegal construction. In such a suit, this Court held that the society was certainly a proper party. The decision in the case of *Ramesh Hirachand* (supra) was explained in paragraphs 8, 9 and 10 of the judgment.

10] In the case of *Chandrakant Bhonu* (supra), the position was virtually identical that which obtained in the present case. The

applicants, who had applied for impleadment were persons who were directly affected by the alleged unauthorized construction and had in fact complained to the authorities in matter of illegal construction. In a suit seeking *inter alia* to restrain the authorities from taking action against the alleged unauthorized construction, it was held that the applicants were certainly proper parties and accordingly their impleadment was allowed.

11] Applying the aforesaid principles to the facts and circumstances of the present case, as discussed earlier, the impugned order will have to be set aside. Accordingly, the impugned order is set aside. The petitioner's application at Exhibit '22' is allowed. The respondent no. 1 - plaintiff to carry out necessary amendment within a period of two weeks from today.

12] Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

13] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)