

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7115 OF 2015**

Mr. Vinod T. Gowani and Anr

..Petitioners

Vs

The Solaris-II Premises
Cooperative society Ltd and Anr.

.. Respondents

Mr. Tejas D.Deshmukh, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 04/12/2015

PC:

1. Heard Mr. Tejas Deshmukh, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, original defendants no.2 and 3 have challenged the judgment and order dated 17.9.2014 passed by the learned Judge, City Civil Court, Mumbai in Chamber Summons No.1686 of 2013 in S.C.Suit No.2451 of 2008. By that order, the learned trial Judge rejected the Chamber Summons taken out by defendants no.2 and 3 for deleting their names from suit.
3. Mr. Deshmukh strenuously contended that the plaintiffs have prayed reliefs only qua defendant no.1 and no prayers are made against defendants no.2 and 3. In fact, defendants no.2 and 3 have intimated to Advocate appearing for the plaintiffs that they have resigned from their post in the year 2011. Despite that

the plaintiffs did not delete names of defendants no.2 and 3. It is in these circumstances, defendants no.2 and 3 took out Chamber Summons for deleting their names. The learned trial Judge observed in paragraph 7 that the plaintiff as well as the defendants have led their evidence and the suit is part-heard. He submitted that this is factually incorrect and only evidence of the plaintiff is over. He, therefore, submitted that the petition requires consideration.

4. In paragraph 7 of the impugned order, the learned trial Judge has observed that defendants no.2 and 3 have claimed to have resigned from their post in 2011. However, they did not move the Court with any prayer till 2013, namely, by filing Chamber Summons for deleting them in the suit. In paragraph 8, learned trial Judge has observed that the plaintiff is dominus lites of the suit and it is the choice of the plaintiff to sue against whom. As the matter is at fag end it cannot be directed to delete the names of defendants no.2 and 3 from the suit merely because they have resigned from their post. It prima facie appears from the record that defendants no.2 and 3 were in-charge of defendant no.1-company at all material times of the suit and the transaction in question. As such, in the absence of defendants no.2 and 3 the suit cannot be adjudicated effectively. Even if I accept the statement of Mr. Deshmukh that only

evidence of the plaintiff is over and the defendants have not led evidence and the suit is not part-heard, still for the reasons recorded in paragraphs 7 and 8 of the impugned order, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order affecting the decision of the case, may be set forth as a ground of objection in Memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)