

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 527 OF 2013

IN

SUIT NO. 181 OF 2011

Arch Shelters Pvt. Ltd.

.....Plaintiff

: V/S :

Jawahar T. Kapadia & 8 Ors.

.....Defendants

AND

Laxmibaug Co-op Hasg. Soc.

.....(Proposed)
Intervenor

* * * * *

Mr. Chirag Modi a/w. Mr. Abhay Jadega & Mr. Pradeep Mane i/by. M/s. Crawford Bayley & Co., Advocate for the plaintiff.

Mr. Nitin Thakker, Senior Counsel a/w. Mr. M. Gupte i/by. Siddharth Mehta, Advocate for defendants no.1 to 3, 5 and 6.

Mr. Amit S. Potnis, Advocate for defendant no.4.

Mr. Mehul shah, Advocate for defendants no.7 to 9.

Mr. Dani, Senior Counsel a/w. Mr. Vaibhav Sugdare i/by. Bagkar & Co., Advocate for applicant in Chamber Summons No.527 of 2013.

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Coram :- Smt. R.P. SondurBaldota, J.

15th September, 2015.

P.C. :-

- 1). This Chamber Summons is taken out by a third party for impleading itself as a defendant to the suit. The Chamber

Summons is opposed by all the parties to the suit, except defendant no.4 who is in favour of the intervenor being impleaded to the suit.

- 2). The plaintiff, Company carries on business of building and developing properties. It had entered into agreement of sale-cum-development agreement dated 5th February, 2007 with the defendants and has filed the suit herein for the specific performance thereof. There is no dispute that the property in respect of which the suit has been filed is covered by slums and it has been so declared by the Government. There are also proceedings for acquisition of the property by the Government, so that the same can be developed. The applicant in the Chamber Summons is a proposed Society formed by some of the slum dwellers. There is another Society of the slum dwellers by name, Vighnahartha Society, which has been supporting the plaintiff, as also the defendants, in opposing the acquisition of proceedings initiated by the applicant herein. This has been specifically averred at paras-8 and 9 of the plaint. Similarly, the transaction of sale entered into by the plaintiff and the defendants is with the clear knowledge and awareness of the existence of the slum on the land and the declaration of the property as slum. This is the background against which claim of the applicant for impleading itself as a party defendant to the suit is required to be considered. This is not a clear cut case of seeking specific performance of an agreement of sale whether the property would be in possession of the owners.
- 3). The application is opposed on the ground that a stranger cannot be brought into the dispute arising out of a contract

between two parties. The argument is that, since the suit is for specific performance of contract, the parties thereto can be only the parties to the contract or the persons claiming under them by subsequent title as enumerated in Section 19 of the Specific Relief Act and not any other person.

- 4). Mr. Dani, learned Advocate appearing for the applicant relying upon the decision of the Apex Court in the case of **Kasturi Versus. Iyyamperumal and Others, reported in (2005) 6 SCC page 733** submits that for deciding the question who is proper party in a suit for specific performance, the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. The question is to be decided keeping in mind the scope of the suit. Thus, there is no clear bar, as such, to the presence of a stranger to the agreement.
- 5). Ordinarily, a stranger to an agreement would not be allowed to intermeddle in the dispute between the vendor and the purchaser. However, as has been held by the Apex Court the presence of a party who has a legal interest therein would be a proper party and as such can be impleaded to the suit because the result in the suit would affect him legally. Undoubtedly, in the case on hand, the members of the applicant proposed Society would be entitled to the possessory rights over the suit property. Considering the pleadings where it is seen that both the parties to the suit are clearly in contact and also in negotiation with the other group of the slum dwellers i.e. members of Vignahartha Society and have been opposing the acquisition of proceedings initiated by the applicant herein, it is obvious that though the suit is styled as a

suit for specific performance of the agreement between the plaintiff and the defendants, in its actual purport, does not limit to that relief. The applicant herein, in the circumstances, would undoubtedly be a proper party to the suit. Hence, the Chamber Summons is allowed in terms of prayer clause (a). Costs to be costs in cause. Amendments to be carried out within a period of 4 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)

Rane

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(sr. no.19)
Tuesday,15.9.2015

CERTIFICATE

. Certified to be true and correct copy of the original signed order.