

FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4892/2016

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| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. Jitendra Ahuja i/b. Bharat Joshi for the petitioner

Mr. Aditya Thakkar with Harshal Damania for the respondent No.4.

**CORAM : K. K. TATED, J.**

**DATE : JUNE 24, 2016**

**P.C.:**

1. Heard. By this petition under Article 227 of the Constitution of India, the petitioner plaintiff challenges order dated 01.12.2015 passed by the Bombay City Civil Court at Mumbai in Chamber Summons No.1810/2015 rejecting the application made by the plaintiff for allowing him to delete the name of defendant No.4 from the cause title of the plaint.

2. The learned counsel for the plaintiff submits that the trial court erred in coming to the conclusion that there are no grounds to delete the name of defendant No.4 from the cause title of the plaint. He submits that this court, in the matter of

***Anil Dinmani Shankar Joshi & Anr. Vs. Chief Officer, Panvel Municipal Council AIR 2003 BOM 238*** held that every plaintiff has right to withdraw the suit. In support of his contention, he relies on para 47 of the said judgment. He further submits that even the defendant, in written statement specifically stated that there is no cause of action against him. Hence, the suit be dismissed with costs.

3. The learned counsel for the petitioner submits that these facts were not considered by the trial court while passing the impugned order. Hence, this Hon'ble Court be pleased to set aside the order dated 01.12.2015 and allow the plaintiff's chamber summons No.1810/2015 permitting the plaintiff to delete the name of defendant No.4 from the cause title of plaint in L.C.Suit No.2750/214.

4. On the other hand, the learned counsel for respondent defendant No.4 vehemently opposed the Writ Petition. He submits that the plaintiff has specifically averred that defendant no.4 is co-owner of the suit premises for which the corporation has issued notice u/s. 351 of the Mumbai Municipal Corporation Act, 1888 in

respect of the unauthorised construction. He submits that if any order is passed by the court, that is going to affect the right of defendant no.4 as a co-owner, therefore, defendant No.4 is necessary party in the suit. He further submits that earlier, the plaintiff filed Writ Petition No.86/2014 in this court challenging the order dated 06.09.2013 and 31.10.2013 passed by the Assistant Engineer (B&F) Ward/Designated Officer in pursuance of notice under section 351 of Mumbai Municipal Corporation Act, 1888 dated 03.08.2013. That Writ Petition was withdrawn by the petitioner. At that time, this court passed order dated 31.07.2014 and specifically directed the plaintiff to join defendant No.4 in the proposed suit. He relies on para 2 of the said order, which reads thus:

*“2. This writ petition challenges orders dated 6.9.2013 and 31.10.2013 passed by the Assistant Engineer (B and F Ward)/ Designated Officer in pursuance of section 351 notice dated 3.8.2013 issued to the petitioner. By the impugned order, the explanation as given by the petitioner in regard to the alleged unauthorized construction/structure as set out in the 351 notice has been rejected. Learned counsel for the Corporation submits that the writ petition raises a controversy on disputed facts which can be gone into by the Civil Court as observed by the learned Single Judge of this Court in the Judgment delivered in Writ*

*Petition No.2243 of 2013. Learned counsel for the petitioner fairly states that his clients are willing to approach the Civil Court. Learned counsel for the Intervenor submits that though initially in view of the rejection of regularization application of the petitioner his clients had opposed liberty to be given to the petitioner to file a Suit. However, on taking instructions from his clients who are present in Court he states and agrees that the petitioner cannot be prevented to approach the Civil Court if the petitioner so desires. His only grievance is that his clients should be made parties to the Civil Suit which may be instituted by the petitioner. Learned counsel for the petitioner agrees that if the petitioners approach the Civil Court they will implead the Intervenors as defendants.*

5. On the basis of these submissions, the learned counsel for the defendant No.4 submits that there is no substance in the Writ Petition and same be dismissed with costs.

6. Heard both sides. It is to be noted that, there is no dispute that in the present proceedings the plaintiff is challenging the notice u/s. 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the unauthorised construction in the building Mazda Mansion situated at 83/85, Trinity Street, Dhobi Talao, Mumbai – 400 002. The defendant No.4 is a co-owner of Mazda Mansion Building. These facts are stated by the plaintiff in

para 5 of the plaint. If any order is passed in respect of the notice u/s. 351 of the Mumbai Municipal Corporation Act, 1888, the right of defendant No.4 is going to affect.

7. Considering these facts, I do not find any reason to interfere with the well reasoned order passed by the trial court dated 01.12.2015 in Chamber Summons No.1810/2015 rejecting the application made by the plaintiff for deleting the name of defendant No.4 from cause title of the plaint.

8. Hence, the Writ Petition stands dismissed. No order as to costs.

**JUDGE**