

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

WRIT PETITION NO.4141 OF 2016

Shri Sanjay Kumar Ashta .. Petitioner

Vs.

Airport Authority of India & Ors. .. Respondents

And

Mumbai International Airport Pvt.Ltd. .. Applicant

Ms.Meena A. Ruparel for the petitioner

Ms.Kavita Anchan i/b M/s.M.V.Kini & Co. for the respondent no.1

Mr.Pravin Samdani Sr.Counsel, Mr.Farid Karachiwala and Ms.Shoma Maitra i/b M/s.Wadia Ghandy for the respondent

CORAM : K. K. TATED, J.
DATE : JUNE 23, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this Writ Petition under Article 227 of the Constitution of India, petitioner org. plaintiff challenges the order dated 6.2.2015 passed by Bombay City Civil Court, Mumbai in Chamber Summons No.1795 of 2015 in Suit No.7072 of 2003 directing plaintiff to join

Mumbai International Airport Pvt.Ltd. as defendant within 7 days from the date of order.

3 The learned counsel for the plaintiff submits that proposed defendant failed to produce on record any documentary evidence to show that they are necessary party in the Suit filed by the plaintiff for declaring his possession as a lawful. Suit property involved in the present proceeding is described in paragraph 3 of the plaint which reads thus:

“The plaintiff is in vacant and peaceful possession of the land and the Tinsheet structure admeasuring $\frac{46.00 + 46.50}{2}$ Meter x $\frac{14.65 + 7.45}{2}$ Mt. = 511.06 Sq.Mt.

situated adjacent to the Burial Ground, Opp. IAAI import Ware House, IAAI Colony, Sahar,Mumbai 400 099, Eaast side Opens, South Side IAAI Wall, North side Opening for entrances, West Side-Compound wall having a small pedestrain opening hereinafter referred to as “Said Premises”. The plaintiff had purchased the “Said Premises” adjacent to and in the vicinity of the land of Defendant No.1. The plaintiff states that the plaintiff alongwith Defendant No.3 & 4 has been in lawful, vacant and peaceful possession of said premises since 1961.”

4 The proposed defendant placed on record lease deed dated

26.4.2006 executed by Airports Authority of India in their favour by which the entire property was leased out to the proposed defendant. The proposed defendant claims that suit property is part and parcel of the lease deed. These facts are considered by Trial Court at the time of passing the order dated 6.2.2016. The Trial Court in paragraph 4 of the impugned order recorded that plaintiff during the course of arguments has claimed that this property is in residential quarters of the airport authority of staff which is carved out in schedule I. Considering these facts, Trial Court directed plaintiff to join petitioner as defendant.

5 The learned counsel for the plaintiff submit that applicant is not necessary party to decide the issue in the present Suit. In support of that he relies on the judgment in the matter of ***Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others, (2010) 7 SCC 417***. Bare reading of the said authority shows that if court finds that applicant is necessary and proper party, court can direct plaintiff to join them as defendant.

6 Considering these facts and the law declared by the Apex Court in the matter of ***Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others*** (Supra), I do not find any reason to entertain the present Writ Petition to set aside the impugned order dated 6.2.2016. Hence, Writ Petition stand rejected.

7 At the request of advocate for petitioner, time is extended till

30.6.2016 to carry out appropriate amendment in plaint and serve amended copy on added defendant.

JUDGE