

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

WRIT PETITION NO.4265 OF 2014

Chouhan Builders India Housing Development
Pvt.Ltd. .. Petitioners

vs.

BMC & Anr. .. Respondents

Mr.Ghanashyam Mishra for the petitioner

Mr.Vinod Mahadik for the BMC

Ms.Priyanka Rathi i/b M/s.Shamim & Co. for the respondent no.2

CORAM : K. K. TATED, J.
DATE : JULY 15, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff challenges the order dated 25.2.2014 passed by City Civil Court at Dindoshi, Borivli Division, Mumbai in Chamber Summons No.847 of 2013 in L.C.Suit No. 656 of 2012 directing petitioner plaintiff to join respondent no.2 org. applicant as defendant No.2 in L.C. Suit No.656 of 2012 on the ground that Corporation issued notice under section 314 of the Mumbai Municipal Corporation Act, 1888 on the complaint filed by respondent no.2.

3 The learned counsel for the petitioner plaintiff submits that they filed L.C. Suit No.656 of 2012 challenging the notice issued by respondent Corporation under section 314 of the Mumbai Municipal Corporation Act, 1888. He submits that the said notice was issued by the Corporation in respect of temporary office site and godown constructed by the plaintiff on the suit plot i.e. final plot no.106 at TPS – VI, CTS No.1707 to 1748 of Village Khotwadi, Santacruz (W), Mumbai. He submits that they constructed the said temporary site office and godown as per the permission granted by Executive Engineer (III) Slum Rehabilitation Authority vide letter dated 10.9.2012. In support of this contention, advocate for the petitioner plaintiff relies on paragraph 14A of the plaint which reads thus:

“14A. The Plaintiffs state that pursuant to their application dated 27/3/2012 made to the Executive Engineer, Slum Rehabilitation Authority to approve the said container offices, the Executive Engineer-III, Slum Rehabilitation Authority vide his letter dated 10/9/2012, granted the permission for temporary site office and godown made by readymade containers for implementation of proposed S.R.Scheme on the suit plot F.P.No.106 at TPS-VI, CTS No.1707 to 1748 of Village Khotwadi, Santacruz (W), Mumbai. Annexed hereto and marked Exhibit 'N' is the copy of the said letter dated 10/9/2012 along with layout plan annexed thereto.”

4 The learned counsel for the petitioner plaintiff submits that Trial Court has allowed respondent no.2's application only on the ground that he made complaint to the Corporation about the said alleged unauthorised construction. He submits that respondent no.2 is not necessary party in a Suit filed by plaintiff. He submits that there is dispute between plaintiff and Corporation. Hence, impugned order is

set aside.

5 On the other hand, the learned counsel for the Corporation submit that there is a dispute between petitioner and respondent no.2. He submits to the Courts order.

6 The learned counsel for the respondent no.2 vehemently opposed the present Writ Petition. She submits that Corporation issued notice under section 314 of the Mumbai Municipal Corporation Act, 1888 on the basis of complaint filed by them. She submits that in respect of the land on which the plaintiff has constructed site office as well as godown , the respondent no.2 is claiming the possession of the same. She submits that to that effect, respondent no.2 already filed Suit bearing No.646 of 2012 and same is pending in Bombay City Civil Court, Mumbai. Hence, respondent no.2 is a necessary party in the Suit filed by petitioner. Therefore, there is no question of interfering with the well reasoned order passed by Trial Court dated 25.2.2014 in Chamber Summons No.847 of 2013.

7 I have heard the learned counsel for the parties. It is to be noted that in the present proceeding though respondent Corporation issued notice under section 314 of the Mumbai Municipal Corporation Act, 1888 calling upon the plaintiff to remove unauthorised construction on the basis of complaint filed by respondent no.2 /applicant, respondent no.2/applicant cannot be termed as necessary party. Dispute is between plaintiff and Corporation. Corporation can take appropriate steps to protect their interest. Apart from that

respondent no.2 already filed a Suit No.646 of 2012 for protecting their interest and same is pending for hearing and final disposal on its own merits.

8 Considering these facts, I am of the opinion that the impugned order passed by Trial Court dated 25.2.2014 is required to be set aside. Hence, following order is passed:

- a) Writ Petition is allowed.
- b) Impugned order dated 25.2.2014 passed by Bombay City Civil Court, Mumbai in Chamber Summons No.847 of 2013 in L.C. Suit No.656 of 2012 is set aside.
- c) Chamber Summons No.847 of 2013 in L.C.Suit No.656 of 2012 stands dismissed.
- d) No order as to costs.

JUDGE