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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 4101 OF 2012

M/s. Nice-Sites.

...Petitioner.

V/s.

The Pune Municipal Corporation and Ors.

...Respondents.

Mr. S.S. Kanetkar for the Petitioner.

Mr. R.S. Khadapkar for Respondent 1.

CORAM : N.M. Jamdar, J.

14 September, 2016.

Oral Order :-

By order dated 24 August 2012, notices were issued to the Respondents. Parties were put to notice that the Writ Petition will be taken up for final disposal.

2. The Petitioner has filed Special Civil Suit No. 220 of 2011 in the Court of Civil Judge, Senior Division, Pune for a declaration that Respondent Nos. 3 and 4 should not prevent the Petitioner from accessing the hoardings which are the subject matter of the Suit. An application below Exhibit 5 seeking temporary injunction was filed by the Petitioner. In this application a relief to

restrain the Respondent – Defendant from demolishing or changing the suit hoardings was sought. The application was rejected by the learned Civil Judge by order dated 5 August 2011. Appeal from Order No.1062 of 2011 was filed by the Petitioner was disposed of on 18 January 2012. An application below Exhibit 100 was filed by the Petitioner on 13 February 2011 seeking amendment to the plaint to add the unit holders of Respondent No.5 as party Defendants. By the impugned order dated 27 March 2012, the application has been dismissed by the learned Civil Judge.

3. Heard learned Counsel for the parties. As far as the private Respondents are concerned, none appears on behalf of Respondent Nos.3 and 4. While issuing notices in this Writ Petition, the proceedings in the suit have been stayed.

4. While rejecting the application filed by the Petitioner, the learned Civil Judge has gone on merits of the amendment. The learned Civil Judge has held that objection regarding not impleading the unit holders is merely a technical objection and for that purpose amendment is not necessary. This approach is not correct. As can be seen from the pleadings, the Respondents have taken a specific defence that the management of Defendant No.5 is vested in the hands of unit holders known as 'Sagar Arcade Association'. It is their specific case that Defendant No.5 is not a legal entity. In view of this

specific contention, the amendment is sought by the Petitioner – Plaintiff.

5. The learned Counsel for the Petitioner submitted that all the unit holders individually have granted permission/authorization in favour of the Petitioner and since the management of Defendant No.4 vest in the unit holders, it is necessary that the unit holders – party Defendants can place their version on record. Once the Respondent had taken a specific contention that Defendant No.5 is not a separate entity and its management is in the hands of unit holders and it is the case of the Petitioner that these unit holders are supporting the Petitioner, the issue did not remain only a technical issue. The presence of these unit holders in the suit was therefore necessary.

6. The learned Counsel for the Petitioner has also rightly submitted that the non-joinder of these necessary party could lead to dismissal of the suit on the ground that Defendant No.5, who is not a legal entity cannot be prosecuted as a separate party. Ultimately, the Petitioner is the Plaintiff and it is for the Plaintiff to choose whom to join as Defendants, unless the exercise is mala-fide or vexatious. This being the position the impugned order passed by the learned Civil Judge on the premises that inclusion of the unit holders is mere technicality is required to be quashed and set aside.

7. The Petition therefore deserves to be allowed. The order dated 27 March 2012 passed by the Civil Judge, Senior Division, Pune is quashed and set aside. The Application filed by Petitioner below Exhibit 100 in Special Civil Suit No.220 of 2011 stands allowed. Amendment to be carried out within period of four weeks from today. The learned Civil Judge will thereafter issue necessary directions/notices in respect of the added Defendants. The Writ Petition is disposed of accordingly. Registry to communicate the order to the learned Civil Judge at the earliest.

(N.M. Jamdar, J.)