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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7296 OF 2014

Noor Mohammed Khatri ... Petitioner

Vs.

Smt. Bhadrabala Ghanshyambhai Patel and another... Respondents

Mr.Sachin S.Punde, Advocate for Petitioner.

Mr.Bhavin R.Bhatia, Advocate for Respondent No.1.

Mr.Vinod Mahadik, Advocate for Respondent No.2 – B.M.C.

CORAM : R.G.KETKAR, J.

DATE : 14th JANUARY, 2016

P.C. :

. Heard Mr.Sachin S.Punde, learned Counsel for the petitioner, Mr.Bhavin R.Bhatia, learned Counsel for respondent No.1 and Mr.Vinod Mahadik, learned Counsel for respondent No.2. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as applicant, has challenged the judgment and order dated 03/04/2014 passed by the learned Judge, City Civil Court, Dindoshi, Borivali Division, Goregaon, Mumbai in Chamber Summons No. 688 of 2012 in L.C.Suit No. 1464 of 2011. By that order, the learned trial Judge dismissed the

Chamber Summons taken out by applicant for adding him as party defendant No.2 in the Suit.

3. Mr.Punde strenuously contended that respondent No.1, hereinafter referred to as plaintiff, has instituted L.C. Suit No. 1464 of 2011 challenging the notice dated 12/05/2009 issued by respondent No.2, hereinafter referred to as defendant No.1, under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short 'Act'). In paragraphs 9 & 10, plaintiffs specifically asserted that one Noormohammad Khatri (applicant herein) is in habit of lodging false and frivolous complaints. He is having certain dispute against Dilip Patel - son of plaintiff and with a view to settling the personal score against the plaintiff's son, Noormohammad Khatri has lodged false and frivolous complaint against the plaintiff in respect of room no.2. Under the influence of Noormohammad Khatri, defendant No.1 issued show cause notice under Section 351 of the Act on 12/05/2009.

4. In paragraph 15b also it is asserted that notice is not bonafide and has been issued at the behest of Noormohammad Khatri to harass the plaintiff. He submitted that in view of these assertions, plaintiff on her own should have impleaded applicant as a party defendant. He submitted that the applicant had instituted Writ Petition No. 311 of 2010 in this Court against Dilip Patel – son of the plaintiff. It was contended that the son of the plaintiff has incurred

disqualification under 16(1D) of the Act for having put up unauthorised structure. The applicant had also made grievance that there is inaction on the part of the defendant No.1 – Corporation and the Municipal Commissioner in not taking any action for disqualification and not making any reference to the Small Causes Court under Section 18 of the Act. The applicant also relied upon the communication of the Assistant Municipal Commissioner, P/South ward informing the owner/occupier of room No.2 that no satisfactory and conclusive proof/documentary evidence was submitted to show that construction in question was authorised one. The Assistant Municipal Commissioner, therefore, directed owner/occupier of the offending construction to remove the same within 15 days from the date of the receipt of the order. The Division Bench of this Court directed defendant No.1 to take decision on the show cause notice. On this count also the plaintiff should have impleaded applicant in the Suit. He relied upon the decision of the Apex Court in the case of *Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd.* **AIR 2013 Supreme Court 200.**

5. On the other hand, Mr.Bhatia supported the impugned order. He submitted that applicant has grievance against plaintiff's son. He submitted that there is a political rivalry between plaintiff's son and applicant herein. He submitted that whether the structure is authorised or not is essentially between plaintiff and the Corporation

and therefore, applicant is neither a necessary nor a proper party. He relied upon the decisions of the Apex Court in the case of i) Ramesh *Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay*, **(1992) 2 Supreme Court Cases, 524** ii) in the case of *Kasturi Vs. Iyyamperumal*, **AIR 2005 Supreme Court 2813**.

6 I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the plaint and in particular, paragraphs 9, 10 & 15b shows that plaintiff made specific allegations against the applicant herein. In view thereof, in fact plaintiff on her own should have impleaded applicant as a party defendant. In paragraph 5 of the impugned order, the learned trial judge recorded that the role of the applicant is only limited for bringing unauthorised construction to the notice of the Corporation. In my opinion, the learned trial Judge has totally misdirected himself in that regard. The learned trial Judge ought to have considered assertions made in paragraphs 9, 10 and 15b of the plaint.

7. In the case of **Ratnagiri Gas and Power Pvt. Ltd.** (*supra*), the Apex Court has observed in paragraph 26 that as and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will

neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be *mada fide* is a serious indictment of the person concerned that can lead to adverse civil consequences against him.

8. Thus, when the trial Judge is considering the case made out by the plaintiff, he has to deal with the assertions made in paragraphs 9, 10 & 15b of the plaint. While doing so, the learned trial Judge will have to record a finding as to whether the show cause notice issued by defendant No.1- Corporation was issued at the behest of the applicant herein and that the show cause notice was issued under the influence of the applicant. Instead of considering this aspect, the learned trial Judge merely observed that the role of the applicant is limited for bringing unauthorised construction to the notice of the Corporation. Mr.Bhatia relied upon i) **Ramesh Hirachand Kundanmal** (*supra*) and ii) **Kasturi** (*supra*). In my opinion, these decisions do not advance the case of the plaintiff as the plaintiff has herself made allegations as noted earlier against the applicant herein. In the light of the above discussion, the impugned order cannot be sustained and is liable to be set aside. Hence, following order.

- i) The impugned order is set aside and Chamber Summons No. 688 of 2012 is allowed.

- ii) The plaintiff shall amend the Suit within 14 days from today and serve amended plaint on the applicant. After service of amended plaint, applicant shall file written statement.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)