

Sequeira

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

WRIT PETITION NO. 7919 OF 2016

Mr.Kalique Vazirullah Khan .. Petitioner
Vs.
Shamim Ahmed Siddique & ors. .. Respondents

Mr.P.J.Thorat, for the Petitioner.
Mr.G.S.Godbole a/w Mr.Suraj Kudalkar, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

By order dated 8 August 2016, parties were put to notice that the Petition will be taken up for final disposal at the admission stage.

2. The Petitioner has challenged the order dated 24 June 2016 passed by the learned City Civil Court Judge Mumbai rejecting the Chamber Summons taken out by the Petitioner for joining him as a party Defendant No.3 in L.C. Suit No.287 of 2016 instituted by Respondent No.1 against the Municipal Corporation of Greater Mumbai. By the impugned order the learned City Civil Court has held that the application is not necessary and proper party to the suit to adjudicate the controversy.

3. Heard learned counsel for the parties.

4. As far as the contentions of the Petitioner being a necessary party without whose presence the dispute cannot be resolved is concerned, the learned City Civil Court Judge, has rightly considered the nature of the suit and the decisions of this Court. The suit is filed by the Respondent No.1 challenging the notice issued by the Respondent No.2 and 3 - Municipal Corporation in respect of the alleged construction being in violation of planning laws. The learned Judge has also observed that in case the Petitioner has any easementary rights they can be adjudicated independently by way of a separate suit. On this basis, the learned City Civil Court has concluded that Petitioner is neither necessary nor proper party in the suit.

5. The learned counsel for the Petitioner has placed reliance on the decisions of this Court in *Lodha Properties Development Private Limited Vs. Kedia Holdings Private Limited and others – 2015 (4) All.M.R. 366*, *Chandrakant Dharma Bhonu Vs Pandurang Ramchandra Dandekar – [2004 (2) Mh.L.J. 782]*, *Dada s/o Gopinath Nimse vs Collector, Ahmednagar and others – 2012 (6) Mh.L.J. 357* and contended that in the facts and circumstances of this case wherein the dispute between the party has a history and that it is upon the insistence of the Petitioner that an action is taken by the Municipal Corporation, the Petitioner can be termed as a proper party. The learned counsel for Respondent No.1 has submitted that these decisions are not applicable in the facts of the case.

6. In the case of *Chandrakant Dharma Bhonu Vs. Pandurang Ramchandra Dandekar* - [2004(2) Mh.L.J. 782], an complaint was initiated by the Plaintiff who was the Petitioner before the Court. Successive orders were passed by the Court directing the Municipal Corporation to take the action regarding unauthorised construction of the Plaintiff. Assurances were given by the Municipal Corporation yet no action was taken. Upon third petition being filed by the Petitioners therein an action was taken. This Court found that the action was taken by the Municipal Corporation grudgingly and the grievance of Petitioners therein was that of inaction on the part of the Corporation due to the clout wielded by the Respondent. The learned counsel for the Petitioner has sought to bring the present case within the view taken in the case of *Chandrakant Dharma*, which is disputed by the learned counsel for the Respondents. It however has to be noticed that the Courts, in suitable cases, have permitted a complainant to be joined as proper party. The grievance made by the learned counsel for the Petitioner that this aspect of the matter has not been referred to at all by the learned City Civil Court Judge, is justified.

7. However, whether to permit the Petitioner as a proper party, is a decision that will have to be taken in the facts of the case as indicated in the case of *Chandrakant Dharma*. Since this exercise has not been carried out by the learned Judge at all, it will be appropriate to restore the Chamber Summons for fresh adjudication

by the learned City Civil Court. It is clarified that the question would be if the Petitioner is a proper party, in light of the legal position enunciated in the above mentioned cases. In the circumstances, the Writ Petition is disposed of by the following order -

i) The order passed by the learned City Civil Court Judge, at Mumbai dated 24 June 2016 rejecting the Chamber Summons No.417 of 2016 is quashed and set aside.

ii) The Chamber Summons No.417 of 2016 is restored to file. The learned City Civil Court Judge will decide the issue as to whether the Petitioner is a proper party in light of what is observed above.

iii) The contentions of the parties as to whether the Petitioner is a proper party are kept open to be considered by the learned City Civil Court Judge.

8. Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)