

JPP

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

WRIT PETITION NO. 359 OF 2016

M/s. Ashray Housing.

... Petitioner.

V/s.

Vithal alias Balu Kashinath Mest (Mesta) & Ors. ... Respondents.

Mr. Pravin Samdani, Sr. Advocate i/b. Madhur Surana for the Petitioner.

Mr. Piyush Shah a/w. N.M. Dedhia and Mittal Savla for the Respondent 3.

Mr. Gokuldas Pai, in-person on behalf of Respondent Nos.5 and 6 present in Court.

Smt. K.Y. Ambekar, IInd Assistant Master to Court Receiver a/w. A.B. Malvankar, Section Officer present in Court.

CORAM : N.M. Jamdar, J.

25 October, 2016.

Oral Order :-

By the impugned order the application taken out by the Petitioner for impleadment as a defendant in the Suit No. 8642 of 1993 has been rejected. The challenge is also raised to the order passed in the Notice of Motion No. 1431 of 2012 by which the Petitioner has sought a direction to the Court Receiver to hand over peaceful possession of the temporary accommodation and permission to the Petitioner to demolish the same on the condition

that it will hand over vacant and peaceful possession in the rehabilitate building to the receiver.

2. After the matter was argued for some time, the learned Counsel for the Respondent No.3 representing one of the Original Plaintiff states on behalf of all Plaintiffs as he is also appearing for all the Plaintiffs in the suit, that the Petitioner will be made as a party defendant in the suit. Even otherwise since the Petitioner has a grievance against the appointment of the Receiver in the said suit and for effective adjudication, it is necessary that the Petitioner be joined as a party defendant.

3. In the circumstances, the order passed in the Chamber Summons dated 23 February 2015 is quashed and set aside and the Petitioner will be joined as a party defendant in the suit. The order passed in the Notice of Motion is a sequator to the order passed in the Chamber Summons and therefore, the Notice of Motion No.1431 of 2012 is restored to file and the order is set aside. Notice of Motion will be disposed of by the learned City Civil Court Judge on its own merits. All contentions of the parties as regard the Notice of Motion are kept open. The Respondents – Plaintiffs will carry out the necessary amendment within period of three weeks from today. The learned City Civil Court Judge will make an endeavour to dispose of the Notice of Motion as early as possible.

(N.M. Jamdar, J.)