

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

WRIT PETITION NO. 12082 OF 2015

Jayesh Pratapchand Shah	... Petitioner
V/s.	
Aashiyana Builders (Lonavala) & Ors.	... Respondents

Mr. Nishant Sasidharan a/w Jainish Jain i/b LJ Law for the Petitioner.
Mr. M. M. Vashi, Sernior Counsel a/w Panthi Desai i/b M/s. M.P. Vashi
& Asso. for the Respondent No.1.
Mr. Ketan Dhavale for Respondent Nos. 2 to 4.

**CORAM : K. K. TATED, J.
DATED : 22/07/2016**

PC.:

. Heard.

2 By this petition under Article 227 of Constitution of India, the Petitioner third party is challenging the order dated 06.02.2015 passed by learned District Judge-4, Pune, below Exh. 28 in Civil Appeal No. 416 of 2011 allowing respondent plaintiff to join the petitioner as respondent in Civil Appeal No. 416 of 2011.

3 In the present proceeding, the respondent plaintiff filed Special Civil Suit No. 1170 of 1997 before the Civil Judge, Senior Division, Pune against Respondent Nos. 2 to 5 original defendants for specific performance of Agreement for Sale dated 16.10.1988. That suit was dismissed by the Trial Court on 19.03.2011. Thereafter, the petitioner purchased the suit property on 21.03.2011 from Respondent Nos. 5 and 6. Thereafter, the respondent plaintiff on 21.06.2011 filed Civil

Appeal No. 416 of 2011 challenging the Judgment and Decree passed by the Trial Court on 24.01.1997. As soon as the plaintiff learnt about the said transaction between respondent Nos. 5 and 6 and the petitioner, the plaintiff preferred application below Exh. 28 for joining the petitioner/third party as respondent in Civil Appeal No. 416 of 2011. The Appellate Court by order dated 06.02.2016 allowed said application. Hence, the present Writ Petition.

4 The main contention raised by the learned Counsel for the petitioner is that the Appellate Court has passed impugned order without giving any opportunity for hearing. He submits that the respondent plaintiff without serving the copy of application below Exh. 28 moved before the Appellate Court for joining petitioner as respondent in the civil Appeal. The Appellate Court without issuing any notice to the petitioner, allowed the said application. To that effect, the learned Counsel for the petitioner has specifically raised the objection in the present Writ Petition. For that purpose, he relies on paragraph 11 and ground No.C, which read thus:

“11. On or about 13th January 2014, Respondent No.1 took out the said Application, to implead the Petitioner as Respondent No.6 in the said Appeal and to carry out the amendment in the said Appeal. It appears that Respondent No.5 and 6 have filed their reply on 4th July 2014 to the said Application. Neither any notice of the said Application was given to the Petitioner nor the said Application was served upon the Petitioner. The Learned Judge by the impugned order allowed the said Application and Respondent No.1 was allowed to carry out the said amendment. Hereto annexed and marked as Exhibits “B” and “C” are the copies of the said Application and the reply of Respondents No. 5 and 6 respectively.

c) That the impugned order is against the principles of nature justice as no notice of the said Application was ever

given to the Petitioner.”

5 The learned Counsel for the petitioner submits that as the District Court passed impugned order without giving any notice to the petitioner, same is required to be set aside.

6 On the other hand, the learned Senior Counsel for the Respondent No.1 vehemently opposed the present Writ Petition. He submits that in any case, the subsequent purchaser during the pendency of litigation is necessary party in the suit for specific performance of agreement. In support of his contention, he relied on judgment of Apex Court in the matter of ***Thomson Press (India) Ltd. V/s. Nanak Builders and Investors Pvt. Ltd. & Ors, (2013)5 Supreme Court Cases 397***, particularly paragraph 41.5. He submits that even if it is admitted that notice was not given to the petitioner at the time of moving the application below Exh. 28, in view of the Apex Court judgment, the order passed by the Appellate Court is proper. Hence, there is no substance in the Writ Petition and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that the Appellate Court passed order below Exh. 28 without giving any notice and opportunity to the petitioner. The same is against justice, equity and good conscience. Hence, in the interest of justice, the impugned order is required to be set aside, remanding application below Exh. 28 to the Appellate Court to decide on its own merits after giving full opportunity to the petitioner.

8 Hence, following order is passed:

- a) Order dated 06.02.2015 passed by the learned District Judge – 4, Pune, below Exh. 28 in Civil Appeal No. 416 of 2011, is set aside.
- b) Application below Exh.28 in Civil Appeal No. 416 of 2011 restored on the file of learned District Judge - 4, Pune for rehearing on its merits.
- c) Petitioner to file their affidavit-in-reply, if any, for application below Exh. 28 within four weeks from today and serve copy on other side.
- d) Hearing of application below Exh. 28, is expedited.
- e) Writ Petition stands disposed off accordingly.

(K.K.TATED, J.)