

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4726 OF 2013
IN
FIRST APPEAL NO.821 OF 2005**

M/s. Qaswa Construction	..Applicant
In the matter between	
Smt. Zaitan Wd/o Alisher Imtiazkhan & Ors.	..Appellants
Vs.	
Mohamed Zahir Shaikh Nasir & Ors.	..Respondents

Mr. Nirmay Dave a/w Ms Priti Tare i/b M/s. Bilawala & Co. for the Applicant
Mr. Piyush Shah a/w Mr. M. K. Tanna for the Respondents original Appellants

CORAM : R. M. SAVANT, J.
DATE : 23rd JUNE, 2016

P.C.

1 The above Civil Application has been filed by the Applicant seeking their impleadment in the above First Appeal. The above Civil Application is founded on the fact that the Applicants have purchased the plot of land admeasuring 3036 sq.mtr bearing Survey No.392, Hissa No.2(P) and Hissa No.4 and CTS No.847(P) Village Malad (West) Taluka Borivli from one Prakash Narayan Date and 7 others under a Deed of Conveyance dated 15-6-2006. The Applicants also claim that a Deed of Confirmation dated 25-5-2007 is also executed in favour of the Applicants in respect of the said land. It is the case of the Applicants that there are hutments, chawls and structures on the said plot of land. The Applicants thereafter have in the above Civil Application

have referred to the correspondence entered into between the Applicants and the Court Receiver informing the Court Receiver who is in possession of the property, of the rights acquired by the Applicants. It is the case of the Applicants that if they are not impleaded in the above First Appeal their rights would be adversely affected especially having regard to clauses 3 and 4 of the decree which is the subject matter of the above First Appeal.

2 The Appellants i.e. the Respondent Nos.1(a) to 1 (g) opposed the above Civil Application by filing an affidavit in reply dated 4-8-2015 and have questioned the entitlement of the Applicants for being impleaded as parties to the above First Appeal on the grounds mentioned therein including the ground that there is a delay of 8 years in filing the above Civil Application which has been done by them in the year 2013, after they have allegedly acquired rights in the year 2006. They also question the entitlement of the Applicants to be impleaded on the basis of the alleged rights they have acquired under the documents in question.

3 The Respondent Nos.1(a) to 1(g) are the original Appellants and the subject matter of the above First Appeal is the dissolution of the partnership firm of M/s Rajdhani Express Bakery, Restaurant and Stores constituted under the Deed of Partnership dated 18-4-1973. The Suit filed for the dissolution by the Respondent Nos.2 to 17 came to be decreed and the

dissolution of the firm was ordered, resultantly the assets of the firm were directed to be realised. In the context of the above Civil Application clauses 3 and 4 of the operative part of the decree passed by the Trial Court are material and are reproduced hereinunder:

3. It is declared that plot of land bearing Survey No.392, Hissa No.2(Part), Village Malad, Taluka Borivali, having shed bearing Municipal No.P-3002(2) situated at 292/2A, Bunder Road, Chincholi, as an assets of the Partnership Firm of M/s. Rajdhani Express Bakery, Restaurant and Stores.”

4. The Court Receiver, High Court Bombay who has been appointed as Receiver in respect of the plot described in clause (3) hereinabove dated 27-4-1983 in N/m shall realise the assets by public auction within three months from the date of this order on “as is where is” basis.

4 Hence in the decree, the Court Receiver has directed that auction be held of the said plot of land and the said assets to realise. The Applicants as indicated above claim the ownership of the said plot of land on the basis of Conveyance and Deed of Confirmation executed in their behalf. Their case therefore that they would be prejudicially affected if they are not heard in the above First Appeal, is required to be accepted, especially having regard to the aforesaid clauses 3 and 4 of the operative part of the decree. As indicated above the application is opposed on the ground of delay. Since the above First Appeal is pending, the ground of delay cannot come in the way of the Applicants.

5 It is well settled that in so far as an application under Order I Rule 10 of the Civil Procedure Code is concerned, the Applicants have either to be necessary or proper parties to the proceedings. In the instant case, the Applicants having acquired right to the plot of land in question under the Conveyance and Deed of Confirmation, hence the Applicants if not necessary parties can be said to be proper parties to the proceedings and their presence would undoubtedly lead to a complete and effectual adjudication of the above First Appeal.

6 Needless to state that the observations made in the instant order are only for considering the application for impleadment filed by the Applicants. The parties would undoubtedly be entitled to urge their contentions on merits at the hearing of the above First Appeal. Amendment to be carried out within 4 weeks from date.

7 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]