

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION NO.11 OF 2016
IN
CHAMBER SUMMONS NO.527 OF 2013
IN
SUIT NO.181 OF 2011**

M/s Arch Shelters Pvt. Ltd. Petitioner
Vs.
Jaideep J. Kapadia & Ors. Respondents

Mr. Gaurav Joshi, Senior Counsel al/w Mr. Chirag Modi, Mr. Sharan Jagtiani, Mr. Abhay Jadeja and Mr. Arun Unnikrishnan i/by Crawford Bayley & Co. for the Petitioner.

Mr. Mudit Gupta i/by Mr. Siddharth Mehta for Respondents no.1A to 3, 5 and 6.

Mr. Rajesh Kachare a/w Mr. Amit Potnis for Respondent no.4.

Mr. P.S. Dani, Senior Counsel a/w Mr. Vaibhav Sugdare and Ms. R.M. Bagkar i/by Bagkar & Co. for Respondent no.10.

Coram : Smt. R.P. SondurBaldota, J.

Date : 25th October, 2016

P.C.

1 This petition is to seek review of the order dtd. 15th September, 2015, by which Chamber Summons No. 527 of 2013 filed by respondent no.10 was allowed and it was directed to be

impleaded as a defendant to the suit. The petitioner is the original plaintiff. Respondents no. 1 to 9 are the defendants to the suit.

2 The petitioner is a Private Limited Company, carrying on business of construction and development of properties. It has filed Suit No.181 of 2011 inter alia for specific performance of the agreement dtd. 5th February, 2007 for sale-cum-development of the suit properties belonging to respondents no.1 to 9. Admittedly, the suit property has been declared as a slum by the Government. There are also proceedings for acquisition of the property by the Government for the purpose of its development. Respondent no.10 is a proposed society, formed by some of the slum dwellers, the occupants on the suit property. There is another proposed society by name Vighnaharta Co-op, Housing Society, formed by the other occupants on the suit property, which has been supporting the petitioner and respondents no.1 to 9 to oppose the acquisition proceedings initiated at the instance of respondent no.10.

3 The petitioner had opposed Chamber Summons of respondent no.10 by its affidavit-in-reply dtd. 3rd July, 2014. It objected to the locus standi of respondent no.10 on two grounds. Firstly that respondent no.10 does not enjoy support from majority of the slum dwellers and that the majority supports Vighnaharta Co-op. Housing Society (proposed). Secondly, the plaintiff being stranger to the agreement of which specific performance is sought

by the petitioner cannot be impleaded to the suit for the specific performance. The other objection of the petitioner to the Chamber Summons was that respondent no.10 was put up by another developer, M/s Geeta Constructions, whose application for similar relief has been dismissed.

4 By the order under review, the contentions of the petitioner were rejected for the reason that respondent no.10 has legal interest in the suit property and as such it would be affected legally by the orders passed in the suit. It was also observed that from the actual purport of the suit, it was clear that though the suit is styled as a suit for specific performance of the agreement between the petitioner and respondents no. 1 to 9, the suit does not limit itself to that relief. Therefore, it is not strictly a suit for specific performance of agreement of sale. The review as originally sought by the petitioner of the order was on the ground that the court has omitted to record six of its submissions in the order and has erroneously recorded the decision in fact cited by the petitioner as the decision cited by respondent no.10. The petitioner has later amended the review petition to add paragraphs 6(A) to 6(I) thereto. These additional paras contain nothing but elaboration of the contentions already taken, the arguments in support thereof including gists of citations relied upon.

5 The first of the sixth submissions of the petitioner said to have been omitted in the order is that respondent no.1 has no

locus-standi to intervene in the suit because the suit is for specific performance of a contract entered into between the petitioner and respondents no.1 to 9. This contention has already been dealt with at para 3 of the order under review. The second and third alleged omissions are that the developer appointed by respondent no.10 had filed Chamber Summons No.363 of 2012, which had been dismissed by this court by the order dtd.24th April, 2012. Thereafter the Chamber Summons herein was taken out in the year 2013. The effect of dismissal of the Chamber Summons taken out by the developer of respondent no.10 would be wholly irrelevant because its claims would stand on entirely different footings. The fourth omission as alleged is that respondent no.10 being an unregistered and unincorporated body, its intervention in the suit would lead to absurd situation wherein approx. 500 individual slum dwellers could seek to join as parties to the suit. Perusal of the affidavit-in-reply to the Chamber Summons filed by the petitioner shows that no such contention had been taken by the petitioner by way of an objection to the Chamber Summons. Mr. Joshi, the learned Senior Counsel for the petitioner submits that since the submission advanced is a submission of law, the petitioner should be permitted to raise the same in the present petition. Even a submission of law if not raised at the appropriate time cannot be permitted to be raised by way of review of the order. The same could be raised by way of a challenge to the order in the higher forum. In any case, Mr. Dani, the learned Senior Counsel appearing for respondent no.10 submits relying upon

Circular No.20 dtd. 18th September, 1998 issued by Slum Rehabilitation Authority, that registration of Co-operative Housing Society of slum dwellers is not to be insisted upon at the initial stage of the proposal of slum rehabilitation and the regular registration of the Chamber Summons of slum rehabilitation should be done after issuance of Commencement Certificate for rehabilitation scheme. The fifth and sixth omissions alleged is as regards the legal interest claimed by respondent no.10 in the suit property and it's contention that it would be affected by the outcome of the suit. This contention have already been dealt with in the order under review.

6 The second objection taken by the petitioner is that the order erroneously records that the decision of the Apex Court in the Case of Kasturi vs. Iyyamperumal and Others, reported in (2005) 6 SCC page 733 was relied upon by respondent no.10 herein, when in fact it was relied upon by the petitioner. Such a ground can never be a ground for review, since decisions cited before the court are for the purpose of drawing attention of the court to the law laid down therein. In the circumstances, the Review Petition is dismissed.

7 Time to carry out amendments pursuant to the order dtd. 15th September, 2015 is extended till 18th November, 2016.

(Smt. R.P. SondurBaldota, J)