

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos.5495 & 5627 of 2015

COMMON ORDER:

These two Civil Revision Petitions filed under Article 227 of the Constitution of India by the revision petitioner/proposed 2nd defendant are directed against the common order dated 01.10.2015 of the learned VI Junior Civil Judge, City Civil Court, Hyderabad passed in I.A.No.594 of 2015 and I.A.No.595 of 2015 filed respectively for the impleadment of the revision petitioner in I.A.No.466 of 2015 and in O.S.No.1442 of 2015.

2. I have heard the submissions of the learned counsel for the revision petitioner/proposed 2nd defendant and the learned counsel for the 1st respondent/plaintiff in both these Civil Revision Petitions. Though notice is served on the 2nd respondent/GHMC/defendant, none appeared. I have perused the material record.

3. The parties in both these Civil Revision Petitions shall hereinafter be referred to as the revision petitioner, the 1st respondent/plaintiff and 2nd respondent/GHMC for convenience and clarity.

4. To begin with, the facts necessary for consideration, in brief, are as follows:-

The first respondent/plaintiff brought the suit against the 2nd respondent/GHMC for perpetual injunction to restrain it and its employees from either interfering in any manner with the suit schedule property or demolishing it, either in part or whole and for other reliefs. In the said suit an interlocutory application in I.A.No.466 of 2015 is also pending. While so, the revision petitioner having filed the first mentioned two interlocutory applications had sought for his impleadment as a party/2nd respondent in the said interlocutory application in the said suit and also as 2nd defendant in the main suit, as according to the revision petitioner, he is the owner of the

property adjacent to the suit schedule property and that he is interested in the *lis*. Those two petitions were resisted by the 1st respondent/plaintiff. At the hearing, exhibits P1 to P11 and exhibits R1 to R3 were marked. On merits, the trial Court had dismissed both the petitions of the revision petitioner by the impugned common order.

5. The case of the revision petitioner, in support of his request for impleadment in the interlocutory application as well as in the suit, in brief, is this: "He is the owner of the building, which is adjacent to the suit schedule building. In the suit schedule building the first respondent/plaintiff is making constructions, which are causing a threat and also endangering the lives of the family members of the revision petitioner. The said suit schedule building, which is under construction, is likely to collapse for not having proper strength and foundation and it being a weak structure. Indeed, the revision petitioner gave a written complaint to the 2nd respondent/GHMC on 30.05.2015 and also a few complaints to the police on various dates in regard to the said constructions being made by the 1st respondent/plaintiff. When no action was taken on the representation given to the GHMC and the complaints given to the police, the revision petitioner had filed a writ petition in W.P.No.15703 of 2015 against the official respondents therein including the GHMC and the first respondent/plaintiff (8th respondent therein) for a writ of Mandamus declaring that the action of the official respondents in not taking action against the 8th respondent therein, i.e., the plaintiff/1st respondent herein as arbitrary and illegal. In the said writ petition, this Court, by orders dated 22.06.2015, directed the GHMC to pass final orders and take appropriate action pursuant to the notices issued to the 8th respondent therein (plaintiff herein) on 06.06.2015 and further directed that the said exercise shall be completed within eight weeks. After the said orders in the said writ petition were passed, the first respondent/plaintiff herein had brought the instant suit against the 2nd respondent/GHMC without impleading the revision petitioner and had obtained *status quo* orders in the suit. The GHMC had already issued a notice on 06.06.2015 to the first respondent/plaintiff to

stop the unauthorised constructions and also directing it to produce the sanctioned plan. The further orders pursuant to the said notice were also passed on 19.06.2015 under Section 452(2) of the Hyderabad Municipal Corporation Act, 1955. The said orders, which were not challenged by the first respondent/plaintiff, have become final. Under the guise of *status quo* orders obtained in the instant suit, the first respondent/plaintiff is proceeding with the constructions unauthorizedly and is constructing a high rise building without any permission and approval of the building plan. The said construction is endangering the lives of the neighbours including the revision petitioner and the members of his family. The said constructions are also being made without leaving the set-backs as required under the Municipal bye-laws, the regulations and the provisions of the Hyderabad Municipal Corporation Act, 1955. The GHMC is not diligently prosecuting its defence in the suit and is acting in collusion with the plaintiff/first respondent. Therefore, the revision petitioner, who is interested in the *lis*, is a necessary and proper party.”

6. Per contra, the case of the first respondent/plaintiff is this: - “The petitioner did not produce any documents to show that he is the owner of the property situate adjacent to the suit schedule property. The allegations that the constructions are being made unauthorizedly and in a manner endangering the lives of the neighbours are all false. There is a library in the ground floor and the remaining portion of the plaint schedule building is being put to use as a mosque for past more than 20 years. There has been no breach of peace in the locality. There are neither deviations nor irregularities. The first respondent/plaintiff is only renovating the upper floor for accommodating the visitors to the mosque and to provide sufficient place for offering prayers. Except making allegations that the rights of the revision petitioner would be affected, no substantive evidence was produced. The revision petitioner has no *locus standi*. If any constructions are being made in violation of the provisions of the Municipal bye-laws, it is for the GHMC to take appropriate action in the matter and it is not for the revision petitioner to make any claims against the plaintiff. Since the petitioner is not having *locus*

standi, no prejudice would be caused if the suit is disposed of in his absence. His presence as a party-defendant in the suit is not necessary for effective adjudication. The petitions are liable to be dismissed.”

7. At the hearing, the learned counsel for both the sides advanced arguments in line with their respective pleaded cases, which are noted *supra*.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

9. Since the pleadings and the contentions are noted *supra*, in detail, there is no need to dilate on the said aspects. The first respondent is making constructions in the suit schedule property is not in dispute. It is not the specific case of the plaintiff that any permission and an approved plan was obtained before making such constructions. Though in the orders impugned it is observed by the Court below that the revision petitioner failed to establish that he is the owner of the neighbouring property, the fact remains that the first respondent/plaintiff did not deny in its counter the fact that the revision petitioner is the owner of the property situated immediately adjacent to the suit schedule property. Being aggrieved of the constructions that are being made by the first respondent/plaintiff and *inter alia* contending that such constructions are being made unauthorizedly without obtaining the approved plan and that the constructions are also being made without leaving the set-backs and that the said constructions in progress are weak and being made without proper foundation and that the said constructions, which are likely to collapse, are endangering the lives of the neighbours, the petitioner sought his impleadment as a party to the suit. Further, when his representation submitted to the 2nd respondent/GHMC and the complaints given to the police authorities were not acted upon, the revision petitioner had filed the writ petition W.P.No.15703 of 2015 before this Court as already stated *supra*, and this Court directed the GHMC to take further action as directed in the orders passed in the writ petition. The operative portion of the writ order dated 22.06.2015 made in the said Writ Petition reads as under:-

“Having regard to the same, by disposing the writ petition,

the GHMC is directed to fix the strict time table in dealing with the statutory notices and explanations and pass final orders and take appropriate action pursuant to the notice issued to the 8th respondent on 06.06.2015. At any rate the entire exercise shall be completed within a period of eight weeks. The 8th respondent shall not undertake any further construction until final orders are passed by the GHMC. With reference to the other aspects i.e., creating nuisance by using mikes and loud speakers, it is open to the petitioner to prosecute the issue with the concerned authority.”

[Reproduced verbatim]

The first respondent/plaintiff, who is a party to the said writ petition, brought the suit immediately thereafter, without impleading the revision petitioner and had obtained *status quo* orders in the interlocutory application filed in the suit. Coming to the aspect as to whether the revision petitioner can be directed to be impleaded as a party to the suit, against the wish of the plaintiff, who is a dominant litigant, it is to be noted that the learned counsel for the revision petitioner had placed reliance on the decision in **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others** ^[1], wherein, the Supreme Court had held that a Court, in its discretion, can direct a plaintiff, though *dominus litus*, to implead a person as a necessary party, if the facts and circumstances of the case so warrant. Having regard to the discussion coupled with the reasons, this Court is satisfied that *prima facie* a case is made out that the revision petitioner is having *locus standi* and that he is also interested in this *lis* and that his presence as a party/defendant in the suit is necessary for effective adjudication of the suit. Viewed thus, this Court is satisfied that the order impugned calls for interference and is liable to be set aside.

10. In the result, both the Civil Revision Petitions are allowed and the impugned common order is set aside. Consequently, I.A.No.594 of 2015 and I.A.No.595 of 2015 filed respectively for the impleadment of the revision petitioner in I.A.No.466 of 2015 and in O.S.No.1442 of 2015 stand allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in both these Civil Revision

Petitions, shall stand closed.

09th March, 2016
Bvv

M.Seetharama Murti, J

[\[1\]](#) (1992) 2 Supreme Court Cases 524