

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2611 OF 2016
IN
FIRST APPEAL (ST) NO. 8087 OF 2016
WITH
CIVIL APPLICATION NO. 2405 OF 2016

Wallace Flour Mills Co Ltd	...Appellant
<i>Versus</i>	
Amrit Kumar Lulla & Anr	...Respondents

Mr Chirag Mody, a/w Mr Rishabh Jogani, i/b DSK Legal, for the
Appellant.
Mr Anil R Mishra, for Respondent No. 1.
Mrs Madhuri More, for Respondent No. 2-MCGM.

CORAM: G.S. PATEL, J
DATED: 16th June 2017

PC:-

1. The Civil Application is filed by Wallace Flour Mills Company Limited (“Wallace”). It is admittedly the landlord of premises that were the subject matter of Long Cause Suit No. 96 of 2007.

2. The Plaintiff, one Amrit Kumar Lulla, filed the suit against the MCGM claiming to be a tenant of Flat No. 31 A Laxmi Estate,

Old Nagardas Road, Andheri (E), Mumbai 400 069. There is no dispute that the Appellant is the landlord and owner of these premises.

3. In the suit, Lulla challenged a notice issued under Section 351 of the Mumbai Municipal Corporation Act 1888 (“**the MMC Act**”). The landlord was not joined to these proceedings. The suit was decreed in favour of Lulla. Wallace seeks by this application to be granted leave to file the present Appeal.

4. I have no hesitation in holding that the landlord was both a necessary and proper party to the suit. Had it been joined, the landlord could have either supported the tenant or the MCGM, and could have brought before Court the relevant facts including as to the nature, extent and duration of the tenancy claimed, the particulars of structure or premises of which the tenancy was claimed and whether the noticed work, namely a shed extension was ever part of the alleged tenancy. There is also no dispute that between Wallace and Lulla there is a history of litigations in the Small Causes Court at Bombay including in relation to this very structure. In fact, this is all the more reason for Wallace to have been joined the Suit.

5. It is impossible to accept the submission made on behalf of Lulla that Wallace had notice, must be deemed to have had notice or must be deemed to have been the “sponsor” of the Section 351 notice issued by the MCGM. None of this can legitimately be argued in opposition to the Civil Application.

6. The Civil Application No. 2611 of 2016 is made absolute in terms of prayer clause (a). Leave granted to Wallace to file this Appeal.

7. There is a second Civil Application No. 2405 of 2016 which is not on board. The Appeal is yet on stamp number. It is for condonation of delay. It has been served. In fact, a Reply has also been filed. List Civil Application No. 2405 of 3026 for orders on 5th July 2017.

(G. S. PATEL, J.)