

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1101 OF 2015
WITH
CIVIL APPLICATION NO.287 OF 2015 IN W.P.No.1101 OF 2015

Ramesh Murlidhar More ... Petitioner
Vs.
Municipal Corporation for Greater Mumbai & another... Respondents

Mr. Akhilesh Upadhyay for Petitioner.
Mr. Pradeep Patil for Respondent No.1-BMC.
Mr. Ajay Panicker i/b. Ajay Law Associates for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 04, 2017

P.C. :

Heard Mr. Upadhyay, learned Counsel for petitioner, Mr. Patil, learned Counsel for respondent No.1 and Mr. Panicker, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 23.08.2014 passed by the learned Judge, City Civil Court, Greater Mumbai in Chamber Summons No.157 of 2014 in L.C.Suit No.4216 of 2013. By that order, the learned trial Judge allowed the Chamber Summons taken out by the respondent No.2 for impleading it as a defendant.

3. In support of this Petition, Mr. Upadhyay strenuously contended that the learned trial judge committed serious error in allowing the Chamber Summons. He submitted that in paragraph 3, the learned trial Judge recorded a finding that the documents show ownership of respondent No.2. He submitted that the said finding is contrary to record as respondent No.2 claims to be lessee of Survey No.37, Hissa No.1 admeasuring 6 acres 22 gunthas and Survey No.38, Hissa No.3

admeasuring 13 acres 37 gunthas, 2(kh). He further submitted that subject matter of the Suit is the notice issued by the respondent No.1-Corporation under Section 354-A of the Mumbai Municipal Corporation Act, 1888 (for short 'Act'). Respondent No.2 is neither a necessary nor a proper party. He submitted that there is a dispute between the lessor and the lessee. While passing the impugned order, the learned trial Judge has not considered the reply filed by the plaintiff opposing the Chamber Summons. The learned trial Judge observed that plaintiff and his Advocate were absent at the time of the argument and therefore, there is no argument advanced on behalf of the plaintiff. He submitted that in fact the learned trial Judge was to decide the Chamber Summons after considering the reply of the plaintiff. As the reply is not considered, the impugned order deserves to be set aside.

4. On the other hand, Mr. Panicker supported the impugned order. He submitted that respondent No.2 is a lessee of Survey No.37, Hissa No.1 admeasuring 6 acres 22 gunthas and Survey No.38, Hissa No.3 admeasuring 13 acres 37 gunthas, 2(kh) as the registered lease deed was executed in favour of the respondent No.2 on 06.02.1974. On the basis of the complaint made by the respondent No.2, respondent No.1 has issued notice under Section 354-A of the Act. He submitted that the respondent No.2 is a proper party as it has interest in the property in respect of which Corporation has issued notice under Section 354-A. He relied upon the decision of the Apex Court in the case of ***Aliji Momonji and Company Vs. Lalji Mavji*, 1996 (5) SCC 379.**

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiff has challenged notice issued by the respondent No.1-Corporation under Section 354-A of the Act. Respondent No.2 claims to be a lessee in respect of Survey No.37, Hissa No.1 admeasuring 6 acres 22 gunthas and Survey No.38, Hissa No.3

admeasuring 13 acres 37 gunthas, 2(kh). Perusal of paragraph 1 of the plaint also prima facie shows that plaintiff claims to be residing in room admeasuring 18 x 10 sq.ft. with 16 ft height situate in CTS No.37/38. It is also evident from record that on the basis of the complaint made by the respondent No.2, Corporation has issued notice under Section 354-A. In paragraph 5 of **Aliji Momonji and Company** (*supra*), the Apex Court has observed thus,

“(5) The controversy is no longer res integra. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the disputes, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is: whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent off the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In Ramesh Hirachand Kundanmal's case [*supra*], this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled, It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only

reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *New Redbank Tea Co. Pvt. Ltd. vs. Kumkum Mittal & Ors.* [(1994) 1 SCC 402] has pointed out that respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that respondent 11 was neither necessary nor proper party in the lease-hold interest involved in the suit. In *Union of India & Anr. vs. District Judge, Udhampur & Ors.* [(1994) 4 SCC 737] the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10, CPC for determination of the compensation in respect of the acquired land. In *Bihar State Electricity Board vs. State of Bihar & Ors.* [(199) 4 Supp. 3 SCC 743] the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kr. Singh vs. Shivnath Mishra* [(1995) 3 SCC 147] similar question was answered holding that the respondent was a necessary party.”

6. As the respondent No.2 claims interest in the suit property on the basis of the registered lease deed dated 06.02.1974, it cannot be said that respondent No.2 is a stranger or that it has no right, title and interest. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the Chamber Summons. Respondent No.2 is a proper party, and therefore, no case is made out for interfering with the impugned order in exercise of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

7. In view of the dismissal of the Petition, nothing survives in Civil Application No.287 of 2015 and the same is disposed of accordingly.

(R. G. KETKAR, J.)