

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 27044 OF 2017

Ramtirth Ghanshyam Hingorani & Anr.	..Petitioners
vs.	
Mr. Sahib Gidwani & Anr.	..Respondents

Ms. H. Tavadia i/b. Mr. H. V. Kode for Petitioners.
Mr. Vivek R. Midha for Respondent No. 1.
Mr. Durgaprasad Sabnis with Mr. Durgesh Kulkarni i/b. Lex Firms
for Respondent No. 2

CORAM : M. S. SONAK, J.
DATE: 25 SEPTEMBER 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] Heard learned counsel for the parties.
- 3] Rule. Rule is made returnable forthwith with the consent of
and at the request of learned counsel for the parties.
- 4] Ms Tavadia, learned counsel for the petitioners submits that
the original respondent no. 1 in case no. 14 of 2010 has assigned
its right in favour of some other party i.e. Orbit Developers.
Accordingly, Orbit Developers is required to be made as a party
respondent in the proceedings before the competent authority. The
impugned order dated 12th July 2017, by which, the petitioners
application for impleadment came to be rejected is illegal and

without jurisdiction. She submits that the presence of Orbit Developers will assist in the adjudication of issues raised in case no. 14 of 2010.

5] Ms Tavadia further submits that the petitioners, had applied for some time in the matter because, the petitioners, at that stage, had instituted an appeal against the order dated 12th July 2017. Instead, by the impugned order dated 31st July 2017, the competent Authority not only declined the petitioners some time but further, went on to close the evidence of the petitioners. Ms Tavadia submits that this order is extremely harsh and the petitioners, are otherwise, ready to file affidavit in lieu of examination-in-chief and to proceed with the evidence.

6] Mr. Sabnis, learned counsel for respondent no. 2 (original applicant before the competent authority) and Mr. Midha, learned counsel for original respondent no. 1 before the competent authority, submits that the petitioners do not deserve any indulgence in the matter because, they have suppressed facts and are bent upon delaying the proceedings before the competent authority. They point out that the applicant before the competent authority is the *dominus litis* and even otherwise there is no obligation to implead any alleged assignees as parties considering the limited scope of jurisdiction in proceedings under Section 24 of the

Maharashtra Rent Control Act. They submit that there is absolutely no jurisdictional error in the making of the impugned orders and therefore, this petition may be dismissed with exemplary costs.

7] Having considered the rival contentions and perused the material on record, I agree with the learned counsel for the respondents that absolutely no case is made out to interfere with the order dated 12th July 2017 made by the competent authority declining the impleadment of Orbit Developers. Apart from the fact that the applicant before the competent authority is *dominis litis*, scope of proceedings under Section 24 of the Maharashtra Rent Control Act is also quite limited. In such circumstances, the alleged assignee can neither be regarded as a necessary nor a proper party. In any case, even assuming that the assignee, is a necessary party, then it is the applicant before the competent authority, who might fail. The petitioners, who are respondent nos. 2 and 3, before the competent authority, have no right to insist upon such impleadment. Accordingly, there is no case made out for grant of any relief in so far as the impugned order dated 12th July 2017 is concerned.

8] However, the impugned order dated 31st July 2017 and the consequential order dated 18th September 2017, in terms of which, the petitioners are deprived of opportunity to lead evidence in the

matter is harsh in the facts and circumstances of the case. The petitioners, had only asked for some reasonable time in order to pursue their remedy against the order dated 12th July 2017. In the circumstances, there was no necessity to make the harsh order of closing the evidence of the petitioners. At the highest, some reasonable time, could have been granted to the petitioners subject to payment of some reasonable costs.

9] Accordingly, the impugned orders dated 31st July 2017 and the order dated 18th September 2017, by which, the competent authority declined to recall its earlier order dated 31st July 2017 are hereby set aside. This shall however be subject to the petitioners paying costs of Rs.5,000/- on or before the next date before the competent authority in favour of the applicant in the application before the competent authority.

10] The matter is now posted on 27th September 2017 before the competent authority. Ms Tavadia states that the affidavit in lieu of examination-in-chief along with documents will be filed before the competent authority on 27th September 2017 itself. Learned counsel for the respondents in these proceedings confirm that they have already been furnished with copy of such affidavit. In any case copy of such affidavit / documents will be furnished to learned counsel appearing for respondent no. 1 before the competent

authority today itself. This means that the further evidence can proceed on 27th September 2017 before the competent authority. The petitioners has assured this Court that they will not seek unnecessary adjournments in the matter.

11] Rule is accordingly made partly absolute in the aforesaid terms. The impugned orders dated 31st July 2017 and 18th September 2017 are set aside. The petitioners are permitted to lead their evidence by filing the affidavit in lieu of examination-in-chief along with documents before the competent authority on 27th September 2017 itself.

12] The petitioners to pay costs of Rs.5,000/- (Rupees Five Thousand) on or before 27th September 2017 directly to the applicant. In case, there is any difficulty, the costs may be deposited before the competent authority and the competent authority will then permit the applicant to withdraw the same.

13] Parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)