

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11327 OF 2014

Dinesh Rajnikant Trivedi .. Petitioner

v/s.

Shree Ganesh Engineering Co. & Ors. .. Respondents

Mr. Ganesh S. Bhat for the petitioner
None for the respondents

CORAM : M.S. SANKLECHA, J.

DATED : 14th AUGUST, 2017

P.C.

1. None appears for the respondents even though they have been served.

2. This Court, while issuing notice to the respondents on 5th March, 2015, had put the parties to notice that in view of the narrow controversy involved, the petition itself may be heard and disposed of finally at the stage of admission.

3. This petition under Article 227 of the Constitution of India challenges, the order dated 25th September, 2014 passed by the 3rd

Joint Civil Judge, Senior Division, Thane. By the impugned order, the petitioner's application to be joined as defendant no.5 to the pending suit bearing Suit No. 298 of 2009, was rejected.

4. The respondent nos. 1 to 3 herein had filed R.C. S. No. 298 of 2009 at Thane, seeking the following reliefs :-

“(a) It be declared and decreed that the defendants nos. 1 to 4 have no right to take unlawful action of eviction without following the due process of law i.e. giving opportunity of hearing the plaintiffs;

(b) Further it be declared and decreed that the defendants nos. 1 and 2 have acted arbitrarily and malafide, violating the Development Control Rules and Regulations for granting F.S.I. / T.D.R. available against the suit premises under the use of the plaintiffs and using the same for the newly constructed premises of Mr. Dinesh Trivedi from Gut No.282/256;

(c) The defendant nos. 1 to 4, their officers, employee or persons acting for them and on their behalf may kindly be prohibited by an order of prohibitory injunction restraining them from taking any action of eviction without following the due process of law;”

5. It was the case of respondent nos. 1 to 3 in the plaint as filed that the respondent nos. 4 and 5 herein i.e. Navi Mumbai Municipal Corporation and its ward officers are seeking to evict the respondent nos. 1 to 3 (original plaintiffs) from the suit land. This by colluding with the petitioner herein so as to enable him to utilize the FSI available in respect of suit land to develop another property. Further, it is averred in the plaint that the entire proceedings against the respondent nos. 1 to 3 (original plaintiffs) have been taken at the instance of the petitioner so as to enable the petitioner to make use of the newly constructed buildings, after having the same vacated.

6. It was in view of the aforesaid plaint as filed by respondent nos. 1 to 3, that the petitioner moved an application to be added as party defendant in Suit No. 298 of 2009. The impugned order dated 25th September, 2014 rejected the application *inter alia* on the ground that no averments have been made in the suit filed by respondent nos. 1 to 3 against the petitioner and, therefore, the petitioner is not a necessary party to the suit. Besides, also indicated that the petitioner's application for being added as party defendant was filed late that is almost when the suit was being disposed of.

7. The findings in the impugned order that there are no averments against the petitioner in the suit as filed by respondent nos. 1 to 3 is perverse as not only the prayers make a reference to petitioner by name but also in para 4 and 6 of the plaint, there are specific averment alleging that the entire action on the part of the respondent Corporation i.e. respondent nos. 4 and 5 is at the instance of the petitioner. Therefore, the basis of the impugned order is contrary to the facts as stated in the plaint filed by the respondent nos. 1 to 3.

8. In so far as the delay is concerned, the addition of parties under Order I Rule 10 of the Civil Procedure Code could be made at any stage of the proceedings. In case the presence of a party is necessary either as a plaintiff or as a defendant, the Court at any stage of the proceedings to effectually and completely adjudicate upon and settle all the issues involved in the suit, it may so direct. Therefore, the delay by itself in making the application to be added as a party to the suit would not result in its dismissal. It is pertinent to note that in terms of Order I Rule 10 of the CPC, the Court has jurisdiction to add parties to suit at any stage of the proceedings.

Therefore, the test to be applied while dealing with the application for being added as a party, is whether in view of the Court, the issue raised in plaint cannot be completely decided in the absence of the party sought to be added under Order I Rule 10 of the CPC. In this case, the plaint alleges in paragraphs 4 and 6 that the Navi Mumbai Municipal Corporation and its Ward Officers (respondent nos. 4 and 5) have acted *malafide* at the instance of the petitioner. Therefore, the impugned order has not applied the correct test to reject the application of the petitioner to be added as party defendant.

9. In the above circumstances, it would be required to exercise my supervisory jurisdiction under Article 227 of the Constitution of India and set aside the impugned order dated 25th September, 2014 while directing the trial Court to add the petitioner as defendant no.5 in the pending Suit No.298 of 2009. The amendment to the plaint by adding the petitioner as defendant no.5 will be carried out by the plaintiffs within the time to be provided by the trial Court.

10. There has been ad-interim stay of the impugned order dated 25th September, 2014 since 5th March, 2015. Mr. Bhat, learned

Counsel for the petitioner informs me that the proceedings have been stayed till date and no further steps have been taken after the impugned order dated 25th September, 2014. Parties are at liberty to apply to the trial Court for expedited hearing of the suit.

11. Accordingly, the Writ Petition is disposed of in the above terms.

12. Parties to act on an authenticated copy of this order and the petitioner will bring the order to the notice of the trial Court within two weeks from today.

(M.S. SANKLECHA, J.)