

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

**WRIT PETITION NO.11006 OF 2014
WITH
APPEAL FROM ORDER NO.974 OF 2014
WITH
CIVIL APPLICATION NO.1183 OF 2014
IN
APPEAL FROM ORDER NO.974 OF 2014**

M/s.The Diamond Surgical
Dressings Works

..Petitioner
(Org. Plaintiff)

V/s.
Municipal Corporation of
Greater Mumbai

..Respondent
(Org. Defendant)

Mr.Nikhil Karnavat a/w Mr.Nakul Jain i/by Maniar Srivastava
Associates for the Petitioner.

Mr.Sonawane for the Respondent-MCGM in W.P.No.11006 of
2014.

Mrs.Madhuri M. More for the Respondent-MCGM in A.O.974 of
2014.

CORAM : M. S. SONAK, J.

DATE : 19 JANUARY 2017.

P.C.

1. Heard Mr.Nikhil Karnavat for the
Petitioner/appellant. Ms.M.M.More appears for MCGM in

Appeal From Order No.974 of 2014. Mr.Sonawane appears for MCGM in Connected Writ Petition No.11006 of 2014.

2. By administrative order dated 16-01-2017, directions are issued for placing the Writ Petition No.11006 of 2014 along with Appeal From Order No.974 of 2014 before the Bench taking up Appeal From Order No.974 of 2014 as per the present roaster. Accordingly, both the Appeal From Order as well as Writ Petition have come up for final disposal today.

3. In the Writ Petition, the challenge is to the order dated 22 July 2014 made by the City Civil Court (Trial Court) dismissing the petitioners (Original Plaintiff) Chamber Summons seeking leave to amend the plaint and to implead 91 persons as defendants.

4. The petitioner claims to be tenant of Gala No.6 (Suit premises) admittedly located in a building owned by the MCGM. It is the case of the petitioner that he had erected several cubicles in the suit premises, in order to assist it in

undertaking its business of warehouses. It is the case of the petitioner that the MCGM, proposed to wrongfully treat the petitioner's clients as sub tenants in respect of the suit premises and on the said basis, to proceed to attorn the tenancy itself in their favour. Mr.Karnavat learned counsel for the petitioner points out that during the pendency of the suit, the MCGM had made an order dated 26 March 2010 purporting to attorn such tenancy. Accordingly, by the Chamber Summons, the petitioner has merely applied for leave to challenge to such order dated 26-03-2010 and to implead the parties in whose favour, petitioner apprehended attornment. Mr.Karnavat submits that the amendment was applied on the basis of subsequent development, which has taken place during the pendency of the suit. Mr.Karnavat submits that the Trial in the suit is yet to commence.

5. Mr.Karnavat submits that even the MCGM raised objection to the proposed amendment, has merely pointed out that the tenancy is in respect of only 23 persons and therefore, there was no necessity of impleading 91 persons. Mr.Karnavat

submits that in the light of all this, the Chamber Summons was required to be allowed. Mr.Karnavat on the basis of instructions from the petitioner's submits that in any case, impleadment of at least 23 persons was required to be allowed along with consequential amendments.

6. Mr.Karnavat submits that in the course of hearing in this Writ Petition, the petitioner has handed in the modified schedule of amendment, thereby restricting impleadment to only 23 persons, in respect of whom attornment order dated 26-03-2010 relates. He points out that certain averments have also been introduced which are basically in the nature of challenge to the order dated 26-03-2010. Mr.Karnavat states that the petitioner will be satisfied if amendment is allowed and in terms of the modified scheduled of the amendment now handed him.

7. Ms.More and Mr.Sonawane learned counsel for MCGM, at the outset point out that the petitioner has no *locus standi* either to institute the suit or to pursue this petition. They

submit that there is already an eviction order made against the petitioner which has attained finality. They submit that the petitioner created certain rights in the 23 persons referred to in the order dated 26-03-2010, on account of which, the MCGM had no option but to accept them as tenants in respect of the suit premises. They submit that the petitioner is not even in possession of the suit premises. They submit that attempt to implead 91 persons, as defendants in the suit was quite unwarranted. They submit that except 23 persons referred to in the order dated 26-03-2010 the others, have no concern with the suit premises. For all these reasons they submit that there is no case made out to interfere with this impugned order by which the Chamber Summons came to be rejected.

8. The modified scheduled of amendment handed in by the learned counsel for the petitioner is taken on record and marked as 'X' for the purpose of identification.

9. There is no dispute that the order dated 26-03-2010 attorning tenancy in respect of 23 persons now described as

defendant nos.2 to 23 in the modified schedule of amendment, was made after the institution of suit. Therefore, making of order dated 26-03-2010 by the MCGM is a subsequent event. Taking into consideration the reliefs applied for by the petitioner in the suit i.e. restraint upon any attempt at attornment in favour of any other persons or accepting any persons, other than the petitioner, as tenant in respect of the suit premises, there can be no difficulty in permitting the petitioner to amend the plaint. In fact, the amendment as proposed in the modified schedule of amendment is quite necessary and will assist in the effectual adjudication of the main issues raised in suit.

10. If the reply of the MCGM, opposing the Chamber Summons is perused, it is clear that the MCGM basically, had objection to impleadment of persons other than the 23 persons referred to in notice order dated 26-03-2010. It was the case of the MCGM that except the 23 persons in favour of whom the order dated 26 March 2010 has been made, others have no connection with the suit premises and therefore there is no

necessity to implead them as defendant in the suit. In such circumstances, the Trial Court could have always permitted the petitioner to amend the suit but restricted impleadment to only the 23 persons which are referred to in the order date 26-03-2010. In view of the modified schedule of amendment, the aforesaid difficulty no longer survives because the petitioner now wants to implead only these 23 persons as defendants in the suit.

11. The issues as to whether the petitioner has any *locus standi* or not, whether the petitioner is sole tenant in the suit premises or not, are issues in the main suit and there is no necessity to decide all these matters at this stage. Amendment was applied for within reasonable period from the making of the order dated 26-03-2010. The trial in the suit is yet to commence. Taking into consideration all these aspects, this petition is required to be allowed and the petitioner is permitted to amend the plaint as per the modified schedule of amendment as handed in which is marked as 'X' for identification.

12. Rule is accordingly made absolute in the petition to the aforesaid extend. Leave is granted to the petitioner to amend the plaint in terms of the modified schedule. All such amendment to be carried out within a period of four weeks from today. The Trial Court to permit the petitioner to carry out the amendment on the basis of the authenticated copy of this order. To the authenticated copy of this order shall be annexed the modified scheduled which is now marked 'X' for identification.

13. The petitioner to serve the copy of the amended plaint to the MCGM, which shall be entitled to file a written statement to the entire plaint as amended. Such written statement to be filed within a period of six weeks from the date of service of amended copy of the plaint. In case, written statement is already filed in response to the unamended plaint, the MCGM shall be at liberty to file additional written statement in response to the amended plaint, where a period of the six weeks as aforesaid.

14. The Trial Court issue summons for settlement of the issues to the newly impleaded defendants.

15. In the Appeal From Order, the appellant (Original Plaintiff) challenges order dated 19-09-2014 by which the appellants Notice of Motion No.586 of 2010 came to be rejected. In this Notice of Motion, the appellant had applied for the following interim relief.

(a) That pending the hearing and final disposal of the suit, the defendants, their servants, agents and representatives be restrained by an order and perpetual injunction of this Hon'ble Court from accepting the occupants of the sub-galas of the suit-premises, viz, Gala No.6 situate on the ground floor of a building known as Italian Building, at 381 Sane Guruji Marg, Agripada, Mumbai-400 011 whose names are mentioned in the List of Occupants of the sub-gala of the suit-premises at Exhibit D to the plaint as direct tenants without the consent of the plaintiffs."

16. As noticed earlier, the MCGM, by order dated 26-03-2010 has already accepted 23 persons as tenants in

respect of the suit premises. The suit premises are now required for the purpose of extension to the extending Nair Hospital. The learned counsel for the appellant however points out that the MCGM now intends to redevelop the building wherein the suit premises are located. Record indicates that way back on 29-07-1997 proceedings had been initiated against the appellant under Section 105 of the Mumbai Municipal Corporation Act 1888 and that such an order at least *prima facie*, has attained finality. It is however, the case of the learned counsel for the appellant that since such order was never executed for the last 13 years or more such order, no longer survives. The learned counsel for the appellant also points out that subsequent to the making of the orders even rents were accepted by the MCGM.

17. At this stage, it will not be appropriate to impose any restrictions on the MCGM, insofar as its dealing with the 23 persons referred to in the order dated 26-03-2010 are concerned. This is because at least *prima facie*, such 23 persons were found in the suit premises on account of acts of omission

and commission by the appellant. The question as to whether these 23 person are merely clients of the appellant or whether they should have some independent rights, is a matter which ultimately has to be decided finally in the suit. At least *prima facie* it cannot be said that these 23 persons are some strangers to the suit premises. Any restraint upon MCGM, at this stage, might result in the stalling of redevelopment, which is not at all warranted at the behest of the appellant.

18. In any case it is clarified that the whatever actions that the MCGM take in pursuance of the order dated 26-03-2010 and during the pendency of the suit, the same shall always be subject to the final orders that will be made in the suit. Now that 23 persons have been impleaded as parties to the suit it is again made clear that their rights or entitlement will be subject to final orders as will be made in the suit. At this stage, this is sufficient protection insofar as the appellant is concerned. The appellant, has not made out any *prima facie* case for grant of any further reliefs. Even the balance of convenience is not in favour of grant of interim relief as applied

for in the Notice of Motion.

19. Accordingly, the Appeal From Order is dismissed with the aforesaid observations and clarifications. There shall be no order as to costs.

20. Resultantly, the Writ Petition and Appeal From Order are disposed of in the aforesaid terms. All concerned to act on the basis of authenticated copy of this order.

21. Since, the Civil Applications do not survive and the same are also disposed of.

(M. S. SONAK, J.)