

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 355 OF 2011

Jagdish Natvarlal Mehta .. Appellant
vs.
The Maharashtra Housing and Area
Development Authority & Ors. .. Respondents

Mr. N. N. Amin for Appellant.

CORAM : M. S. SONAK, J.
DATE: 05 JANUARY 2017

P.C :

1] Learned counsel for the appellant seeks leave to delete respondent nos. 27 to 29, since, the said parties were also the plaintiffs along with the appellant. He submits that only because the said parties reside at America, it was not possible to join them as appellants.

2] In view of the aforesaid, leave is granted to delete respondent nos. 27 to 29. Amendment to be carried out forthwith.

3] Learned counsel for the appellant further states that service has been effected on respondent nos. 9, 10 and 24. He seeks leave to file affidavit of service. He also points out that the acknowledgements have been received in so far as respondent nos. 10 and 24 are concerned. He submits that in so far as respondent no. 9 is concerned, though, acknowledgement is not received yet, the service has been effected by postage to the

correct address. Leave is granted to file such affidavit of service latest by tomorrow.

4] The challenge in this appeal from order is to the impugned order dated 18 November 2010, by which the appellant's chamber summons seeking leave to amend the plaint was only partly allowed, meaning thereby the same was partly rejected.

5] As against an order made under Order VI Rule 17 of the CPC, an appeal from order will not be maintainable. When this is pointed out, learned counsel for the appellant seeks leave to withdraw this appeal with liberty to institute a writ petition to question the impugned order.

6] At this stage, learned counsel for the appellant discloses that the suit no. 7637 of 1993, in which the impugned order came to be made has also been dismissed and as against such dismissal, the appellant has instituted first appeal no. 125 of 2012, which is pending. If this is the position, then possibly, the appellant may have to seek an appropriate remedy in the pending appeal itself. Accordingly, leave is granted to withdraw this appeal with liberty to take out appropriate proceedings to challenge the impugned order.

7] The appeal is disposed of in the aforesaid terms.