

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 314OF 2013
IN
SUIT NO. 1267 OF 2009

Truly Creative Developers Pvt Ltd ...Plaintiff

Versus

Samtanagar Co-op Hsg Soc Union Ltd & Ors &
Labh Shubh Properties P Ltd ...Defendants

None for the Plaintiff.

Mr RD Soni, i/b AR Shaikh for the Applicant in CHS No.314/2013.

Mr Mahendra Ghelani, i/b Law Charter, for Defendant
No.1/Society.

Mr Pramod N Patil, for Defendant No.2.

Mr Cherag Bulsara, a/w SG Vedphatak, i/b Maneksha & Sethna, for
Defendant No.5.

CORAM: G.S. PATEL, J
DATED: 13th December 2017

PC:-

1. Heard.

2. This is, in my view, a thoroughly misconceived Chamber Summons. As between Defendant No.1, a co-operative housing society, and the Plaintiff, Truly Creative Developers Pvt Ltd (“Truly

Creative”), there was a development agreement in respect of a large tract of land at Samta Nagar, Kandivali (E). Some 162 buildings were to be constructed. Of these, 1784 flats were to be provided to the members of the 1st Defendant federation.

3. The development agreement allowed the Plaintiffs to appoint a sub-developer, an assignee or to enter into a joint venture, and the Plaintiffs proceeded to do just that, or so the Applicant says, when it joined hands with the Applicant, another developer firm. That *inter se* arrangement was in respect of the Plot Nos.T-1 and T-6, and this included several flats, shops and structures as set out in paragraph 5 of the Affidavit in support of the Chamber Summons.

4. The suit between the Plaintiff and the Defendant is in respect of the development agreement dated 31st January 1998, Exhibit E to the plaint. The Applicant in the Chamber Summons, Labh Shubh Properties Pvt Ltd (“Labh Shubh”), is evidently not a party to that development agreement; it entered the scene only much later when it tied up with Truly Creative in what is described as a joint venture agreement. It seems that Labh Shubh and Truly Creative fell out. Labh Shubh says it has filed arbitration proceedings and obtained an award. It says that it did work not intending to do so gratuitously and that the 1st Defendant and the Plaintiff have both obtained the benefit of this work done by Labh Shubh. It is on this basis that Labh Shubh now says that it should be joined as Defendant No.6 to Truly Creative’s specific performance suit against the Society.

5. But for what purpose I am wholly unable to tell. I am unable to see what sort of written statement Labh Shubh could file in such a suit.

Could it say, for instance, that Truly Creative should not get a decree in specific performance? Or could it support the grant of such a decree? Perhaps Labh Shubh is a witness in the specific performance suit, but that is all. I do not see how it is a party, either necessary or proper. It has a completely independent claim in which Truly Creative and the society may be jointly, severally, or jointly and severally, liable. It may already have obtained orders in its favour. None of this entitles it to enter this particular suit.

6. Mr Soni for the Applicants expresses an apprehension that the Plaintiffs may collude with the Defendants or some other result may follow that might conceivably, possibly, or hypothetically perhaps adversely affect some of the Applicants unstated and undefined rights. This is no basis to allow impleadment. He also says that even the slightest interest affords him the right to intervene. There cannot be a proposition of such ambition that every application for impleadment must be allowed willy-nilly, irrespective of the nature of the original suit or the character of the claim by the party seeking impleadment. Indeed, it seems that the only reason Labh Shubh wants impleadment is not because it has anything at all to say or contribute to the specific performance action, but because it wants to serve as a self-appointed overseer of the suit. There is no such thing as the impleadment in a civil action of a watchdog.

7. It is sufficient to note that which is self-evident, viz., that Labh Shubh's rights and entitlements are wholly unaffected by any orders passed in the present suit between Truly Creative - Plaintiff and Samta Nagar Co-operative Society and others as the Defendants.

8. The Chamber Summons is entirely without merit. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)