

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.354 OF 2017
IN
CHAMBER SUMMONS NO.45 OF 2017
IN
SUIT NO. 2618 OF 2007**

M. Visvesvaraya Industrial Research
& Development Centre

... Appellant.
(Original Defendant)

Versus

The State of Maharashtra
and others

... Respondents.
(Proposed Defendants)

In the matter between

Makers Development Services
Private Limited

... Original Plaintiff.

Versus

M. Visvesvaraya Industrial Research
& Development Centre
Defendant

... Original

....

Mr. J.P. Sen, Senior Advocate a/w Ms. Deepa Chavan a/w Mr.
Damodar Desai a/w Mr. Nirav Shah a/w M. Sampat a/w Ms.
Reshma Nathani i/b. Little & Co. for Appellant.
Ms. Jyoti Chavan AGP for State.

....

**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

11th September, 2017.

P.C. (Per: Z.A. Haq, J.)

1. The appellant (original defendant) takes exception to the order passed by the learned Single Judge on 9th August, 2017, by which Chamber Summons No.45 of 2017 filed by the State of Maharashtra and the Collector of Mumbai City under Order 1 Rule 10 of the Code of Civil Procedure is allowed and they are permitted to come on record of the Civil Suit as defendants.

2. The original plaintiff had filed the suit praying for decree against the present appellant (defendant) for specific performance of suit contract. In this civil suit, the present Respondent Nos. 1 and 2 had filed the Chamber Summons No.45 of 2017 praying that the plaintiff be directed to add the State of Maharashtra and the Collector of Mumbai City as the defendant Nos. 2 and 3. The applicants (State of Maharashtra and the Collector of Mumbai City) contended that the land which is the subject matter of the civil suit is admittedly owned by the State Government and the communications said to be the suit contract also referred to communications issued by the State Government and the State Government has an interest in the suit property and the subject matter of civil suit, and therefore, the applicants are necessary or in any case proper parties to the civil suit. The learned Single Judge has allowed the Chamber Summons by the impugned order.

3. The learned Senior Advocate appearing for the appellant has submitted that the learned Single Judge has committed an error in allowing the Chamber Summons filed by the State Government and Collector of Mumbai City overlooking the fact that they are

not party to the suit contract. It is submitted that in a suit for specific performance of contract only the parties to the contract are necessary parties and any other person who is not party to the suit contract would be a stranger and cannot be permitted to participate in the proceedings. To support the submissions, the learned Senior Advocate has relied on the judgment given in the case of *Kasturi vs. Iyyamperumal & Ors. (2005) 6 SCC 733* and the judgment given in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.(1992) Vol.94 Bombay Law Reporter 853*.

It is prayed that the impugned order be set aside and the Motion moved by the State of Maharashtra and the Collector of Mumbai City be dismissed.

4. The learned AGP has supported the impugned order. It is submitted that the plaintiff who is dominus litis has not opposed the motion and the defendant cannot be said to be aggrieved by the impugned order. It is further submitted that the alleged suit contract i.e. the various communications on the basis of which the plaintiff has made the claims in the civil suit, refer to various communications / permissions of the State Government. It is submitted that these communications / permissions show that the State Government has direct pecuniary interest in the subject matter and therefore it cannot be said that the State Government and the Collector of Mumbai City are strangers to the subject matter of the civil suit. It is prayed that the appeal be dismissed.

5. After considering the rival submissions, we find that the arguments on behalf of the appellant (original defendant) cannot be accepted. In the judgment given in the *Kasturi* (cited supra), the plaintiff opposed the impleadment of 3rd party. Moreover, the civil suit was filed praying for decree for specific performance of contract for sale. In the case of *Ramesh Hirachand Kundanmal* (cited supra), again the plaintiffs opposed the impleadment of the 3rd party i.e. the Hindustan Petroleum Corporation Limited which was not having any interest in the chattels and the demolition of chattels did not affect the legal right of the Hindustan Petroleum Corporation Limited. In the present case, the plaintiff who is dominus litis has not opposed the motion and has not challenged the order passed by the learned Single Judge directing that the State of Maharashtra and the Collector of Mumbai City be impleaded as the defendants. Admittedly, the land in question is owned by the State Government. In the present case, the State Government and the Collector of Mumbai City are not claiming through the appellant (defendant) but it is otherwise i.e. the appellant (defendant) is lessee of the State Government.

The provisions of Order 1 Rule 10(2) of the Code of Civil Procedure enables the Trial Court to permit not only parties who are found to be necessary but also to direct impleadment of such parties who are proper parties and their presence before the Court would enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

6. We do not find any illegality in the impugned order. The learned Single Judge has not committed any error of jurisdiction. We see no reason to interfere with the impugned order. The appeal is dismissed. The parties to bear their own costs.

At this stage, the learned Senior Advocate has requested that the civil suit pending before the learned Single Judge be stayed for six weeks to enable the appellant to take appropriate steps in the matter. Considering the facts of the case, the request made by the learned Senior Advocate is granted.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)