

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

CHAMBER SUMMONS NO. 45 OF 2017

IN

SUIT NO. 2618 OF 2007

The State of Maharashtra
Through the Principal Secretary,
Revenue & Forest Department & Anr. .. Applicants

In the matter between :

Makers Development Services Private
Limited .. Plaintiff

Vs.

M.Visvesvaraya Industrial Research
& Development Centre .. Defendant

Ms.Jyoti Chavan, AGP for applicants.

Mr.Arif Doctor a/w. Ms. Sonali Aggarwal i/b Junnarkar and Associates for
plaintiff.

Mr.J.P.Sen, senior advocate a/w. Mr.Damodar Desai, Mr. Nirav Shah,
Mr.Meit Sampat and Ms.Reshma Nathai i/b Little and Co. for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 9TH AUGUST 2017

P.C.

1 The chamber summons is taken out by applicants to be joined as party to the suit on the ground that applicants are the owners of the suit plot. Applicant No.1, viz., Government of Maharashtra, had sanctioned the grant to defendant of lease of certain land owned by the Government of Maharashtra lying and being within Block V of the Backbay Reclamation

Scheme of the Government of Maharashtra in Mumbai. Plaintiff and defendant had executed a letter dated 10th November 1980, which according to plaintiff, was amended, modified and supplemented from time to time by the correspondence exchanged between plaintiff and defendant and according to plaintiff that letter with amendments, modifications and supplements is the 'Suit Contract'. It is plaintiff's case that as per the Suit Contract, plaintiff and defendant had agreed for development of the suit plot. According to plaintiff, defendant was entitled to construct buildings on the suit plot in terms of various Government Resolutions. Though the Government permitted to construct office buildings on suit plot, defendant was in negotiation with the State Government to allow hotel user on a certain portion of the land allotted to it. The arrangement between plaintiff and defendant was, plaintiff could be able to construct a hotel in the suit plot subject to permission received from the State Government and since defendant terminated that contract, plaintiff has filed the suit for specific performance.

The suit was lodged on or about 10th September 2007. Applicants have taken out this chamber summons to be joined as party defendants on the ground that (a) applicants are the owner of the suit plot; (b) applicants have terminated the lease of defendant.

2 Defendant preferred a writ petition challenging the order of termination but the writ petition was disposed as withdrawn with liberty to adopt the alternate remedy of filing an Appeal before the Maharashtra Revenue Tribunal. That Appeal is pending.

3 Plaintiff, *dominus litus*, at the outset stated that they are neither opposed to nor in support of joining applicants as defendants to the suit. The only opposition came from defendant. According to defendant, applicants are neither a proper party nor a necessary party to the suit. Shri Sen, senior counsel appearing for defendant submitted that applicants are not claiming through defendant (vendor) and therefore applicants need not be joined as a party to the suit. Shri Sen submitted that even if the suit is decreed in favour of plaintiff, if applicants' termination is valid and upheld, certainly the decree of specific performance will not be binding on applicants. If the suit is dismissed, certainly, applicants will have nothing to worry about. When one considers both these possibilities, the presence of applicants is not necessary.

4 Shri Sen relied on two judgments of the Apex Court, viz., (i) ***Kasturi Vs. Iyyamperumal & Ors.***¹ and; (ii) ***Ramesh Hirachand Kundanmal Vs.***

1 (2005)6 SCC 733

Municipal Corporation of Greater Bombay & Ors.² and submitted that for deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract. The question that is to be decided in a suit for specific performance of the contract is to the enforceability of the contract entered into between the parties to the contract and if by adding the person seeking to be added, it would result in the scope of the suit for specific performance being enlarged that party should not be added. Mr.Sen also submitted that applicants were not a party to the contract of which plaintiff is seeking specific performance and are strangers to the contract. Mr.Sen also submitted that a stranger to the contract is neither entitled to the right nor subject to the liabilities which arise out of it and therefore, even if a decree is passed, it will not be binding on applicants.

5 I do agree with Mr.Sen that a stranger to a contract or a person who is not claiming through the vendor need not be made a party to the suit. But are the applicants strangers? Let us consider the suit contract of which plaintiff is seeking specific performance. Prayer clause a(i) of the plaint reads as under :

2 (1992) 2 SCC 524

- (a) *that this Hon'ble Court be pleased to declare :*
 (i) *that the Suit Contract as set out in Paragraph 65 of the Plaint, is valid, subsisting and binding and that the Defendant is bound and liable to perform the same specifically;*

Paragraph 65 reads as under :

- (i)
 (ii) *The hotel user in respect of Tower No.2 subsists as a fall back option in the event of it not being possible, for any reason, to implement the contract for office user (as recorded, inter-alia, in the letter dated 5th January 1990 of the Defendant, letter dated 25th April 1990 of the Plaintiff to the Defendant, the letter dated 30th April 1990 of the Defendant to the Plaintiff, letter dated 14th May 1990 of the Defendant to the Government, letter dated 16th May 1990 of the Government to the Defendant and letter dated 4th March 1992 of the Plaintiff to the Defendant, being Exhibit "AL", "AN", "AO", "AP", AQ" and "BJ" hereto).*
 (iii) to (viii)

6 Exhibit AL, Exhibit AP and Exh.AQ are the correspondence exchanged between defendant and the State Government. Therefore, the contract which plaintiff is seeking specific performance includes documents exchanged between defendant and applicants. Therefore, in my view, applicants will not be a stranger to the contract and may not technically fall in the category of a person claiming through vendor. The fact is the correspondence exchanged between applicants and defendant are documents which, according to plaintiff, form the agreement of which specific performance is sought.

7 In the circumstances, in my view, it will be necessary to join applicants as a party to the suit.

8 The chamber summons is allowed in terms of prayer clause (a) and disposed accordingly.

9 Mr.Sen seeks stay of the order for four weeks.

Stay granted.

(K.R. SHRIRAM, J.)