

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 3398 OF 2018**

Santosh S/o Hanumant Salunkhe  
Age: -40 years, Occu. Labour,  
R/o. Mata Temple, Bruhannagar  
Tq. Nagar, Dist. Ahmednagar.

**... PETITIONER**

**VERSUS**

1. The Municipal Commissioner,  
Ahmednagar Municipal  
Corporation, Opp. PWD  
Office, Nagar - Aurangabad  
Road, Ahmednagar.
2. Sagar S/o Satish Kapile,  
Age : Major, Occ.  
R/o Gulmohar Road, Savedi,  
Ahmednagar,  
Tq. & Dist. Ahmednagar.

**... RESPONDENTS**

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Mr. Rahul R. Karpe, Advocate a/w Mr. Yogesh Kale,  
Advocate for the Petitioner.

Mr. Niteen Gaware, Advocate for Resp. No.2.

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**CORAM : V.L. ACHLIYA, J.**

**DATE : 04<sup>th</sup> May, 2018.**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith. By consent of learned counsels for petitioner and respondent no.2 heard finally at the stage of admission.

2. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner-original plaintiff has challenged the order dated 24.01.2018 passed by the 9<sup>th</sup> Joint Civil Judge, Senior Division, Ahmednagar in R.C.S. No.280/2016. By the impugned order, the trial Court has allowed the application (Exh.30) moved by the respondent No. 2 under Order I Rule 10 (2) of the Code of Civil Procedure (for short, "C.P.C.") to join him as a party defendant no.2 to the suit filed by the petitioner-plaintiff.

3. Heard the learned counsel for the petitioner and respondent no.2. No notice issued to respondent no.1 as presence of respondent No. 1 not required for disposal of petition.

4. Before advertent to deal with the submissions advanced, it is useful to refer few facts leading to filing of this

petition. The petitioner – plaintiff herein has filed the civil suit seeking declaration and injunction as against the respondent no.1 -Municipal Corporation to effect that the notice dated 28.04.2016 issued by the respondent no.1 to demolish the suit structure is illegal, bad in law and inoperative against the plaintiff. By way of consequential relief, the petitioner has claimed prohibitory injunction to restrain the respondent no.1-Municipal Corporation and its officers to act as per notice dated 28.04.2016 and to demolish the suit structure.

5. In short, the petitioner has filed the suit with the contention that he is a barber by profession and since last 25 years running the hair-cutting saloon from the suit premises. On 15.07.2013, he purchased the suit premises from owner. Since the premises being very old require repairs. He approached to officials of the Municipal Corporation seeking permission to carry out the repairs. However, he was told that for the purpose of carrying out repair, no permission is required. On 07.01.2015, the petitioner has also submitted application along with the plan for grant of permission. He pursued that application, but he was again told that permission is not required. Believing in the words of the officials of the Municipal Corporation and rainy season to start from the month of June, 2015, he carried out the repair work in his premises. Nobody made complaint while the work was

in progress and completed. Subsequently, the respondent no.2 having jewelery shop in same locality and interested to purchase the shop premises purchased by petitioner made a false complaint to respondent No. 1 – Municipal Corporation. On the basis of the false complaint by respondent No. 2, the Municipal Corporation has issued notice dated 08.03.2016, which was immediately responded by petitioner on 11.03.2016. Respondent no.1, without conducting enquiry and giving opportunity of hearing to petitioner issued impugned order/notice dated 28.04.2016 directing him to demolish the suit structure. Being aggrieved, the petitioner has preferred suit for declaration and injunction.

6. In short, it is a case of petitioner that the respondent no.2 is neither necessary nor proper party to the suit. No relief is claimed against respondent no.2. So also the presence of respondent no.2 is not required to enable the Court to effectively and completely adjudicate the subject matter of the suit. Without any cause or any reason and just to harass the petitioner, the respondent no.2 has moved an application under Order I Rule 10 (2) of C.P.C. to join him as a party defendant no.2 to the suit. The petitioner has resisted the application by filing reply. It is specifically pointed out that the petitioner has claimed no relief against respondent no.2. It is further pointed out that respondent

no.2 is neither necessary nor proper party to the suit and decision in the suit no way affect any right, title and interest of respondent no.2. In spite of that the trial Court has allowed the application moved by respondent no.2 vide order dated 24.01.2018 and directed the petitioner-plaintiff to join respondent no.2 as a party defendant no.2 in the suit. Being aggrieved, the petitioner has preferred this petition.

7. Learned the counsel for the petitioner assail the order with contention that the impugned order is *per se* illegal, perverse, cryptic and contrary to the settled position of law. By referring the nature of the reliefs claimed in the suit, the learned counsel submit that the respondent no.2 is neither necessary nor proper party to the suit. It is contended that no relief is claimed against respondent no.2. The subject matter of the suit is exclusively a dispute between the petitioner and respondent no.1-Municipal Corporation. By the decision in a suit, the interest of defendant no.2 is not going to be affected. In the application, respondent no.2 has not stated as to how the decision in the suit would affect him. The application is filed only with contention that he made a complaint to the Municipal Corporation against the petitioner, which leads to action against the petitioner and, therefore, he is necessary party to the suit. Learned counsel further pointed out that the order passed is cryptic and contrary

to the scope and ambit of order I Rule 10 of C.P.C. It is pointed out that though the learned Judge has observed that respondent no.2 is not necessary party, still allowed the application by observing that the respondent no.2 has stated in his application that his interest is involved in the suit filed by the petitioner and no prejudice would be caused to the plaintiff. It is contended that the order impugned is contrary to the scope and ambit of powers under Order I Rule 10 (2) of C.P.C. and against the settled principles of law, same deserves to be set aside. It is further contended that the petitioner-plaintiff being master of his suit i.e. '*Dominus litus*', he cannot be forced to add the party/petitioner against whom he does not want to fight. It is further contended that respondent no.2 is neither proper nor necessary party to the suit and urged to set aside the order.

8. On the other hand, the learned counsel representing the respondent no.2 supported the order passed by the trial Court. By referring the allegations made in the plaint and he submit that the respondent No. 2 is not a stranger to proceeding and very action against petitioner has been initiated on the basis of complaint lodged by the respondent no.2. It is contended that in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit and also to avoid multiplicity of the proceeding, the presence of

defendant no.2 is necessary and trial Court has rightly allowed the application. It is further contended that the defendant no.1 may not effectively present the case. The defendant No. 1 even not filed written statement in the case which leads to passing order to proceed without written statement. So also, the application filed seeking temporary injunction is also not resisted by defendant no.1. It is further contended that unauthorized construction carried out by the petitioner-plaintiff is causing obstruction to the public including the defendant no.2 to pass from the road. It is contended that the trial Court has acted well within its authority and powers under Order I Rule 10 (2) of C.P.C. and allowed the application. It is contended that the trial Court has rightly observed that the presence of defendant no.2 would help the Court in proper adjudication of the suit subject matter and it would not cause prejudice to the petitioner-plaintiff. It is further contended that the powers under Order I Rule 10 (2) of C.P.C. can be exercised by the Court, if the Court found that the presence of such person would enable Court to effectively and completely adjudicate the questions involved in the suit. In support of the submission advanced, the learned counsel for the respondent no.2 has referred and relied upon the decision of the Apex Court in the case of **Amit Kumar Shaw and another Vs. Farida Khatoon and another** reported in **2005(11) SCC 403** and decision of this Court in the case of **Shivprasad Venkatesh**

***Kamat and another Vs. Vasant Shankar Naik and another***  
reported in **2018 (1) BCR 154.**

9. On due consideration of the submissions advanced in the light of the impugned order, I am of the view that the impugned order is not sustainable in law. It is quite settled position in law that the plaintiff being master of his suit and in a *dominus litus* position, cannot be forced to add parties against whom he does not wish to fight. Order I Rule 10 (2) C.P.C. empowers the Court to add any person as a party to suit at any stage of the proceeding, if the person whose presence the Court find it necessary and enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. So also to avoid the multiplicity of the proceeding is one of the object to be borne in mind while dealing with application filed under Order I Rule 10 (2) of C.P.C. When the Court finds that in absence of person sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court may in exercise of its power under Order I Rule 10 (2) of C.P.C. direct to implead such person as party to suit. It is also quite settled position in law that the order I Rule 10 of C.P.C. gives wide discretion to Court to deal with situation which may result in causing prejudice to the interest of affected party, even not impleaded in the suit, and

where the impleadment of the said party is necessary and vital for the decision of the suit.

10. Thus, though, the Courts have wide discretion and power under Rule I Order 10 (2) of C.P.C. but it is necessary for it to be guided by sound principles laid down in that behalf as to exercise of such judicial discretion while dealing with such application to join as a party defendant to the suit. In order to entertain the application moved by the third party to join as party to suit, it is necessary for the Court to examine such request in the light of over all facts of the case, nature of the suit and the reliefs claimed in the suit, so also ascertain whether such person is necessary or proper party to suit. It is also necessary for the Court to examine whether the presence of such third party is necessary for proper, effective and complete adjudication of the suit subject matter. While dealing with such application, the Court has also to keep in mind the well settled principle that the plaintiff is a master of the suit and he cannot be forced to fight against the party whom he does not want to fight. The Court has to examine as to whether the presence of the party would any way help the Court in effective and complete adjudication of the suit as well as to avoid multiplicity of the suit. The Court is not suppose to exercise its judicial discretion merely on asking of third party and for the reason the presence of such party would

cause no prejudice to plaintiff. In the case in hand, the respondent no.2 is neither proper nor necessary party to the suit. The suit filed by the plaintiff is a suit simplicitor filed seeking declaration and injunction as against the Municipal Corporation. The cause of action of the suit is claimed to be notice of demolition issued by the Municipal Corporation.

11. It is the contention of the petitioner that the suit premises was in existence for a period more than 25 years and since then he is running the business of hair saloon. In the year 2013, he purchased the premises from its vendor. Since the premises was old, it was necessary to carry out certain repairs. He had submitted an application seeking permission to carry out repairs. However, he was advised that for the repair work to be carried out by him, no permission was required. After the work was over, the impugned notice came to be issued, which leads to filing of the suit. It is further case of the petitioner that the respondent no.2 was instrumental in initiating the process against him by the Municipal Corporation as the respondent no.2 was interested to purchase the shop premises as he failed to purchase the shop premises from his vendor and, therefore, filed false complaint against petitioner with defendant No. 1. The plaintiff has not claimed any relief against respondent no.2. Thus, for the adjudication of the suit subject matter, the respondent

no.2 is neither proper or necessary party to the suit. Looking to the subject matter of the suit, it cannot be said that the presence of respondent no.2 as a party defendant to the suit would enable the Court to adjudicate the suit matter effectively and completely. Since the premises of respondent no.2 is situated at far away from the suit premises, there is no question of right of respondent no.2 being affected. In this view, the reasons and findings recorded by the trial Court are perverse and unsustainable in law. The trial Court has exceeded its jurisdiction in allowing the application. The impugned order is against the settled principles of law laid down as to exercise of jurisdiction under Rule I Order 10 (2) of C.P.C. In this view, the impugned order deserves to be set aside. Accordingly, the petition is allowed in terms of prayer clause (B) and impugned order is set aside.

12. Rule made absolute in above terms. No costs.

**( V.L. ACHLIYA )**  
**JUDGE**

SPR