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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1055 OF 2018

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| 1. Laxmi Estates Co-op Hsg. Soc. Ltd. |Petitioner |
| 2. Andheri Varma Nagar Co-op. Hsg. Soc. Ltd., | |
| 3. Amita Mandir Co-op. Hsg. Soc. Ltd. | |

V/s.

- | | | |
|---|---|-------------|
| 1. The Wallace flour Mill Company Ltd. |) | |
| 2. Hemant P. Vissanji |) | |
| 3. Laxmi Charitable Trust |) | |
| 4. Samir Chinai |) | |
| 5. Sudhir Mehta |) | |
| 6. Rohit Adaljia |) | |
| 7. Arvind Dalal |) | Respondents |
| 8. Ajit C. Shah |) | |
| 9. Virendra G. Bhatt |) | |
| 10. Sir Mathuradas Vissanji Female |) | |
| Education Trust |) | |
| 11. Aarti H. Vissanji |) | |
| 12. Ameeta A Parpia |) | |
| 13. Shalin S. Divatia |) | |
| 14. Municipal Corporation of Greater Mumbai |) | |
| 15. The Charity Commissioner, Mumbai. |) | |

Mr. Anil R. Mishra for the petitioner
 Mr. Chirag Modi I/b D.S.K. Legal for respondent no. 1
 Mr. Ppramod Patil for respondent no. 14
 Ms. Geeta Sonawane AGP for respondent no. 15

CORAM : NITIN W. SAMBRE, J.

CLOSED FOR ORDER : JULY 11, 2018.

PRONOUNCED ON : JULY 25, 2018.

P.C.

Impugned in the present petition is the order dated 22/12/2017 passed in Suit No. 3712 of 2017 whereby defendant no. 14-Municipal Corporation of Greater Mumbai is ordered to be struck down as defendant pursuant to provisions of Order I Rule 10 (2) of the Code of Civil Procedure.

2 The petitioner-plaintiff filed the aforesaid suit seeking certain declaration, mandatory injunction in relation to immovable property. For the purpose of consideration of the issue raised in the present petition, the petitioner has invited attention of this Court to prayer clause (e) of the plaint which reads thus:

*“(e) That this Hon’ble Court be pleased to declare that the act of Defendant no. 1 of getting issued the Development rights/FSI admeasuring 1936.20 Sq. mtrs. in lieu of part (c) of the **Suit Property** by suppressing and not disclosing to Defendant no. 14 about Plaintiffs Societies entitlement and taking advantage of Defendant No. 1 name in property card is contrary to MOFA 1963 and is illegal, unlawful and not binding on Plaintiffs Societies”.*

3 Petitioner-plaintiff has added defendant no. 14 as M.C.G.M. to the suit. According to the petitioners, the bundle of facts and the prayer in the plaint, if given cumulative effect, what is required to be noticed is the defendant no. 14 Municipal Corporation of Greater Mumbai is a necessary party and was accordingly impleaded. He would then urge that the petitioner-plaintiff is *dominus litis* and as such has every right to add appropriate/necessary party to the suit. That being so, considering prayer clause (e) in the plaint, the order impugned is not sustainable. The learned counsel for the petitioner/plaintiff would rely upon the Judgment of this Court in the matter of **Clarinda D'Souza vs Mccann Erickson India Limited¹**. According to him, once the plaint discloses the cause of action against defendant no. 14, said defendant was impleaded as party based on the averments in the plaint. He would urge that what is required to be considered is the facts stated in the plaint and not the defence raised by the defendants. The learned counsel for the petitioner then would urge that the finding recorded by the learned

¹ [2003 (2) MhLj 373]

Court below while passing the order impugned, thereby striking out the defendant no. 14 MCGM pursuant to provisions of Order I Rule 10 (2) is not sustainable as incorrect finding of fact as regards non challenge to any of the act of defendant no. 14 is formed to be a basis. He sought quashing of the order impugned.

4 *Per contra* the learned counsel for respondent would urge that the order impugned is just and proper in the facts and circumstances of the case. According to him, even if what has been stated in the plaint is accepted, there is no cause of action to proceed with the suit against the defendant no. 14-MCGM. He would then urge that if the law laid down by the Apex Court in the matter of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others**² if appreciated, there is no embargo on the right of the parties so also on the powers of the Court to exercise discretion for striking out unnecessary party to a Suit. According to him, defendant no. 14 is not appropriate party as no cause of action or direct relief is claimed.

2 [(2010) 7 Supreme Court Cases 417]

He would then urge that in the facts of the case, once the Trial Court has reached to a conclusion that defendant no. 14 needs to be struck off, then this Court should not interfere in its extraordinary jurisdiction. He sought dismissal of the petition.

5 Considered rival submissions.

6 Perusal of provisions of Order I Rule 10 particularly sub Rule 2 postulates that the Rule contemplates wide discretion in a Court in the matter of issuing directions *qua* addition or striking out a party irrespective of stage of the suit. While doing so, what is required to be appreciated is whether for final adjudication of the issue raised in the suit, it is necessary that the concerned party should be before the Court or not. Apart from above, it is also required to be noted that while determining the issue as to whether party to the suit is necessary one or not, the Court must appreciate that there is right in the plaintiff to claim relief against such party *qua* subject matter of the Suit and whether the effective Decree cannot be passed or given effect to, in absence of such party.

7 In the case in hand, if petitioners'/plaintiffs' case before the Court below is appreciated, what is claimed by the petitioner is a joint declaration about ownership of the Suit properties which consist of common amenities and facilities in the area as described in the plaint map. In addition, a specific relief is claimed against defendant no. 14 in prayer clause (e) by the petitioner/plaintiff that defendant no. 1 has suppressed and not disclosed to defendant no. 14 about the rights of the petitioner/plaintiff Society to have advantage of the Suit property.

8 So as to substantiate the claim in prayer clause (e), the petitioner has come out with bundle of facts as pleaded in the plaint and looking to the nature of dispute raised, in my opinion, defendant no. 14 appears to be a necessary party.

9 That being so, this Court is left with no other option but to quash the impugned order dated 22/12/2017 in Suit No. 3712 of 2017 by City Civil Court, Dindoshi. As such, present petition stands

allowed in terms of prayer clause (a) which reads thus:

“(a) That the Hon’ble Court will be pleased to call for the records and proceedings of B.C.C.C.L.C. Suit No. 3712 of 2017 and after examining the validity, legality and propriety of the impugned Order dated 22/12/2017 be pleased to quash and set aside”.

10 The learned Trial Court shall proceed with the Suit in the backdrop of aforesaid observations.

[NITIN W. SAMBRE, J.]

Iresh
Siddharam
Mashal

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by Iresh
Siddharam
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2018.07.25
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