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

WRIT PETITION NO. 3603 OF 2018

Sameer S. Dedhia,	...	Petitioner.
V/s.		
The Municipal Corporation		
of Greater Mumbai and anr	...	Respondents

Ms. Priti Sejal Shah, for petitioner
Mr. Pradeep M. Patil, for respondent No.1.
Mr. Amol Tembe, for respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 16.2.2018, passed by the City Civil Court, Mumbai in Chamber Summons No.2113 of 2015 in L. C. Suit No. 2595 of 2015.

3] This Chamber Summons was filed by the Director of present respondent No.2, for impleadment in the suit.

4] The suit is filed by the present petitioner against respondent No.1 Municipal Corporation for challenging the Notice

issued under Section 351 of the Mumbai Municipal Corporation Act, (for short called as “M.M.C Act”), which notice was pertaining to the construction of the toilet block alleged to be illegal and unauthorised.

5] According to learned counsel for respondent No.2, on account of the construction of said toilet block, his access to the company is obstructed and on the complaint of respondent No.2, Municipal Corporation has taken action. S.C. Suit No.2527 of 2015 is also pending between the parties, raising similar contention and in view thereof, it was submitted for impleadment of respondent No.2 in the present suit as necessary party was required.

6] The trial Court, has allowed the said Chamber Summons, despite objection raised by the present petitioner on account that in a separate suit, matter will be decided between the petitioner and respondent No.2. In this suit only the legality and validity of the notice issued by the Municipal Corporation under Section 351 of the MMC Act, was to be decided and for that purpose presence of respondent No.2 is not at all necessary.

7] It is admitted position that there is dispute between the parties in respect of the subject matter of this suit also, as the construction of the toilet block, which according to respondent No.2, definitely affecting his access to the property. As per very case of respondent No.2, the Municipal Corporation has taken action against

the petitioner, only on the complaint of respondent No.2. It may be true that separate and substantive suit is pending between the parties, but the fact remains that whatever the decision which may be arrived at in this proceeding, is bound to affect the interest of respondent No.2, in that suit also, it is going to have impact. Therefore, if such any such decision or order to be passed in this suit, will affect the interest of the respondent No.2 in the suit filed by him and also in respect of his access to the property, then it can be definitely said that respondent No.2 is having legal and substantial interest to be joined in the present suit. The decision of this suit will have a bearing on his right in the access to his property and also on his contention that the construction of toilet block is illegal and unauthorized. Therefore, respondent No.2 appears to be having legal and substantive interest in the subject matter of suit making necessary his impleadment in the suit. Therefore, no interference is warranted in the impugned order passed by the trial Court.

8] The Writ Petition stands dismissed.

9] At this stage, learned counsel for the petitioner seeks two weeks time for carrying out the amendment to implead respondent No.2. The request being reasonable, it is granted.

[DR.SHALINI PHANSALKAR-JOSHI, J.]