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

WRIT PETITION NO. 14207 OF 2018

Arun R. Singh & Anr. ...Petitioners
vs
Municipal Corporation of Greater Mumbai & Ors. ...Respondents

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Mr B.P.Pandey a/w Mr V.B.Pandey for the Petitioners.
Ms Shital Mane for Respondent No.1.
Mr Nishant Shashidharan a/w Mr A.S.Tripathi for Respondent Nos.3
and 4.

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**CORAM : B.P.COLABAWALLA, J.
DECEMBER 13, 2018.**

P.C. :

This Writ Petition has been filed seeking to challenge the order passed by the City Civil Court, Mumbai dated 3rd August, 2018 in Chamber Summons No. 709 of 2018 in Long Cause Suit No. 1494 of 2018. This Chamber Summons was filed by the interveners to be joined as a party Defendants to the suit on the ground that they were necessary and proper parties. The suit as originally filed was between the Plaintiffs (the Petitioners herein) and the Municipal Corporation of Greater Mumbai and one of its Officers. In this suit, the interveners wanted to be joined as party Defendants and hence filed the Chamber Summons. This Chamber Summons came to be allowed

by the Trial Court vide the impugned order and hence the present Writ Petition.

2 Learned advocate appearing on behalf of the Petitioners submitted that the Trial Court had completely gone wrong in allowing the Chamber Summons, inasmuch as the interveners were neither necessary nor proper parties to the suit. He submitted that the Lis was between the Petitioners herein and the Mumbai Municipal Corporation. The suit that was filed, was to challenge the notice issued under Section 351 and the order passed thereon under the provisions of the Mumbai Municipal Corporation Act, 1888 (for short MMC Act). He submitted that in this dispute the interveners have absolutely no role to play as they were neither necessary nor proper parties to the suit. He, therefore, submitted that the impugned order was perverse and required interference under Article 227 of the Constitution of India.

3 In support of his proposition the learned advocate for the Petitioner relied upon a decision of the Supreme Court in the case of **Mohamed Hussain Gulam Ali Shariffi Vs Municipal Corporation of Greater Mumbai and others [2017(6) All M.R. 420 (SC)]**. Placing reliance on this decision the learned advocate submitted that

the Supreme Court has clearly held that in a situation like the present one, the interveners are neither necessary nor proper parties to the suit, and therefore, cannot be joined as a party Defendants. He has also relied upon a decision of another Single judge of this Court in the case of **Deju Somaya Salian Vs The Municipal Corporation of Greater Mumbai and Ors. [Writ Petition No. 7123 of 2018 decided on 24th September, 2018]** and in the case of **Shriman Kishor s/o Chandrakant Urane Vs City of Nagpur Corporation and Anr. [Writ Petition No.937 of 2017 decided on 4th April, 2018]**.

4 On the other hand, the learned advocate appearing on behalf of Respondent Nos.3 and 4 submitted that the interveners though they may not be necessary parties to the suit, they are certainly proper parties that are required to be added. He submitted that the peculiar facts of this case would clearly reveal that they are proper parties. He submitted that in the facts of the present case, the notice was issued under Section 351 of the MMC Act by the Corporation to demolish the alleged unauthorized structure that was in the compound of the society in which some of the Respondents reside. He submitted that this unauthorized structure directly affects them as it encroaches upon their ingress and egress into the society. It is taking these peculiar facts into consideration that the

Trial Court has come to the conclusion that they are proper parties, and therefore, added them as party-Defendants by exercising its discretion under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short "CPC"). He submitted that this discretion has been exercised after due application of mind and by giving proper and cogent reasons, and therefore, should not be interfered with unless it is shown that the discretion exercised by the Trial Court is either perverse or directly contrary to the provisions of law. He submitted that no such case was made out and hence the Writ Petition ought to be dismissed. Learned advocate appearing on behalf of the Respondents also relied upon a decision of the Supreme Court in the case of **Aliji Momonji & Co. Vs. Lalji Mavji & Ors.** reported in **[(1996) 5 Supreme Court Cases, 379]**. Relying upon this decision the learned advocate for the Respondents submitted that the Supreme Court has clearly held that when interest of a party seeking to be joined is going to be affected then he would be at least a proper party to be joined to the suit.

5 I have heard the learned counsel for the parties at some length and have perused the papers and proceedings in the Writ Petition including the impugned order. As mentioned earlier the Chamber Summons before the Trial Court was filed by certain

interveners (described as Applicants in the Chamber Summons) who are the members of Nirman Co-operative Housing Society situated at Rani Sati Nagar, S.V.Road, Malad (W), Mumbai 400 064. They are residents of this society. The Plaintiffs in the suit are also residents of the very same society and in fact Plaintiff No.2 is the Secretary of the said society. It was the case of the Applicants that the Plaintiffs illegally constructed a structure of a considerable size adjacent to the gate of the said society violating the approved building plans and hence they moved the Municipal Corporation of Greater Mumbai for taking action against the said alleged illegal structure. It is, in these circumstances, that the MCGM issued a notice under Section 351 of the MMC Act and which was challenged by the Plaintiffs in the suit filed before the Trial Court. Thereafter, the Chamber Summons was filed.

6 This Chamber Summons was heard by the Trial Court wherein the Trial Court went through the plaint, Written Statement of MCGM, documents filed with the plaint as well as with the Chamber Summons and heard all the respective parties through their Advocates. It thereafter framed an issue as to whether the Applicants are necessary or proper parties to be added as Defendants in the present suit and answered the said issue in the affirmative.

The reasons for holding so can be found in the impugned order from paragraphs 9 to 25. The Trial Court has referred to several decisions of the Supreme Court including the decision that was relied upon by the Petitioners before me. After considering all the case law, the Trial Court held that in all the cases that were cited before it, the party sought to be added had no direct day to day concern with the property in relation to which the notice under Section 351 of the MMC Act was issued. The Trial Court then held that in the facts of the present case the rights of the members of the society were directly affected as the alleged structure and which was claimed to be illegal, was directly affecting their ingress and egress in the society and they were facing a hindrance and obstruction at the entrance of the society gate. It is, in these circumstances, that the Trial Court held that the members of the society and whose rights were being directly affected were proper parties to the suit.

7 I find that the reasoning given by the Trial Court to be correct. The facts of this case are very peculiar. As mentioned earlier the alleged illegal structure is situated at the gate of the society and is hindering ingress and egress of the members of the society. Any order passed in this suit would directly affect their rights. This being the case I do not think that the Trial Court went

wrong or misdirected itself in exercising its discretion by joining the Applicants before it as party-Defendants to the suit.

8 In the view that I take, I am supported by a decision of the Supreme Court in the case of **Aliji Momonji & Co.** (supra). In this case also, the appellant-lessee filed a suit for perpetual injunction against the Municipal Corporation of Greater Mumbai restraining them from demolishing portion of the building. The Municipal Corporation had issued a notice under Section 351 of the MMC Act for demolition of the above building on the ground that the appellant had made unauthorized structure. Respondent Nos.2 to 6 sought to come on record under Order 1 Rule 10 of the CPC by contending that they have a direct interest in the property, and therefore, they ought to be joined. This application was allowed by the Trial Court and upheld by the High Court. That is how the matter reached Supreme Court. While deciding this controversy the Supreme Court in paragraphs 5 and 6 held thus -

- “5. The controversy is no longer *res Integra*. It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The question is : whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building ? The landlord has a direct and substantial interest in

the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances, the question of the commercial interest would not arise. In *Ramesh Hirachand Kundanmal's case* (supra), this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had no direct interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true, as pointed out by Shri Nariman that in para 14, this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *New Redbank Tea Co. Pvt. Ltd. v. Kumkum Mittal and Ors.* has pointed out that respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstances, this Court had held that respondent 11 was neither necessary nor proper party in the lease-hold interest involved in the suit. In *Union of India and Anr. v. District Judge*, the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10, C.P.C. for determination of the compensation in respect of the acquired land. In *Bihar State Electricity Board v. State of Bihar and Ors.* the same question was also reiterated and it was held that the Electricity Board was a person interested and also a

necessary party. In *Anil Kr. Singh v. Shivnath Mishra* similar question was answered holding that the respondent was a necessary party.

6. In view of the finding that in the event of building being demolished, right, title and interest of the landlord would directly be affected, the landlord would be a proper party, though no relief has been sought for against the landlord. The High Court, therefore, was right in refusing to interfere with the order passed by the trial Court impleading the landlords.”

9 The Supreme Court whilst deciding the appeal, in the facts of that case, held that the landlord had a direct and substantial interest in the building, for which the demolition notice under Section 351 of the MMC Act was issued. In the event of its demolition, the landlord's right would be materially affected. His interest in the property would be in jeopardy. It was, therefore, ultimately held that he was a proper party to the suit though no relief was sought against him. The Supreme Court thereafter held that the High Court was right in refusing to interfere in the order passed by the Trial Court impleading the landlord.

10 Here also, I find that in the peculiar facts of the case, the members of the society who have been ordered to be joined as Defendants to the suit are proper parties as their rights to access their own property is directly affected and would be put in jeopardy depending on the outcome of the suit. In this case also though no

relief is claimed or could be claimed against the newly added Defendants, I find that they were proper parties to the suit, and therefore, been correctly joined by the Trial Court by exercising its jurisdiction under Order 1 Rule 10 of the CPC.

11 Having said this, I shall now deal with the decisions relied upon by the learned advocate appearing on behalf of the Petitioner. The first decision relied upon was a decision of the Supreme Court in the case of **Mohamed Hussain Gulam Ali Shariffi** (supra). The facts of this case would show that the appellant had filed a suit against Respondent No.1 (Municipal Corporation of Greater Mumbai) essentially challenging the notice issued under Section 351 of the MMC Act. The main grievance in the said notice was that the Plaintiff had made some unauthorized construction in the building in question and challenging the legality of that notice the suit was filed. During pendency of the suit, Respondent Nos.2 and 3 filed an application seeking to implead themselves as Defendants in the suit. It was *inter alia* alleged that Respondent Nos.2 and 3 had interest in the suit house inasmuch as they claimed to have ownership rights therein. It was also alleged that Suit No. 424 of 2008 seeking the specific performance of the agreement was also filed by Respondent Nos.2 and 3 in relation to the suit house and the same was pending. It

was thus prayed that Respondent Nos.2 and 3 being the necessary parties for proper adjudication of the rights in relation to the suit house be added as Defendants in the suit in question. This contention of Respondent Nos.2 and 3 was negated by the Supreme Court. The Supreme Court held that having regard to the nature of the controversy which was the subject matter of the suit, Respondent Nos.2 and 3 were neither necessary nor proper parties. In the facts of that case it was quite clear that what was required to be decided in the suit was whether the notice under Section 351 of the MMC Act was legally valid or otherwise. To decide this question, the only proper party was Mumbai Municipal Corporation and Respondent Nos.2 and 3 had no role to play in that decision. Their right and interest was not being affected by the decision in the suit. This was more so considering that Respondent Nos.2 and 3 had filed their independent suit seeking specific performance of the agreement in relation to the property in question. It was in these circumstances that the Supreme Court came to the conclusion that Respondent Nos.2 and 3 before it were neither necessary nor proper parties. This decision, at least in my opinion, has no application to the facts and circumstances of the present case. This decision proceeds on a totally different factual matrix. The Supreme Court categorically holds that the rights of Respondent Nos.2 and 3 are not going to be

affected in any way when the suit filed against the Mumbai Municipal Corporation challenging the validity of the notice issued under Section 351 of the MMC Act is decided. This is how the Supreme Court comes to the conclusion that Respondent Nos.2 and 3 are neither necessary nor proper parties. The facts, as mentioned earlier, are completely different in the present case. The outcome of the challenge to the notice issued under Section 351 of the MMC Act will directly affect the members of the society. This is because the alleged illegal structure is at the gate of the society and is hindering the ingress and egress of the members to access their own premises. I, therefore, find that the factual situation before me is completely different from the factual matrix that was before the Supreme Court in the case of **Mohamed Hussain Gulam Ali Shariffi** (supra). This being the case I find that the reliance placed on this decision is of no assistance to the Petitioner.

12 Similar is the situation in the case of **Deju Somaya Salian** (supra) (the decision of another single Judge of this Court). Here also that the landlord was being sought to be added as a party, which application was allowed by the Trial Judge. Apart from stating that he is the landlord, nothing was brought on record to show how his rights were directly being affected. It is in these circumstances and

placing reliance on the decision of the Supreme Court in the matter **Mohammed Hussain Gulam Alim Shariffi** (supra) ~~the~~ learned Single Judge set aside the order of the Trial Court joining the landlord as a party-Defendant to the suit. This decision also has no application to the facts of the present case as it was rendered in a totally different factual situation.

13 The last decision relied upon was a decision of the Nagpur Bench of this Court in the case of **Shriman Kishor s/o Chandrakant Urane** (supra). I find that the factual situation in this matter also was totally different from the one present before me. I also find that in the decision rendered by the Nagpur Bench, the decision of the Supreme Court in the case of **Aliji Momonji & Co.** (supra) was not brought to its notice at all. I find that even this decision does not render any assistance to the Petitioner.

14 In view of the foregoing discussion, I find no merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

15 At this stage the learned advocate appearing on behalf of the Petitioners prays that ad-interim relief granted by this Court on

31st August, 2018 staying the order of the Trial Court be continued for a period of four weeks from today. This is vehemently opposed by Respondent Nos.3 to 8 (the applicants before the Trial Court). Considering that ad-interim relief was granted by this Court on 31st August, 2018, and to enable the Petitioner to test this order before the Supreme Court, the ad-interim relief granted earlier on 31st August, 2018 shall continue to operate for a period of four weeks from today.

(B.P.COLABAWALLA, J.)