

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13175 OF 2017

Chirag Jain	 Petitioner
V/s.	
Rajesh Bhavsar & Ors.	 Respondents

Mr. Amogh Singh, i/by Mr. Jeet Gandhi, for the Petitioner.

Mr. Prerak Sharma for Respondent No.1.

Mr. Pradeep M. Patil for Respondent Nos.2 and 3-BMC.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST MARCH, 2018.

P.C. :

1. Heard Mr. Singh, learned counsel for the Petitioner, Mr. Sharma, learned counsel for Respondent No.1, and Mr. Patil, learned counsel for the Respondent-Municipal Corporation.

2. This Writ Petition takes an exception to the order dated 31st October 2017 passed by the Assistant Sessions Judge, City Civil & Sessions Court, Greater Bombay, thereby allowing the Chamber Summon No.493 of 2017 filed in L.C. Suit No.143 of 2017.

3. The said Chamber Summons was taken out by Respondent No.1, claiming himself to be a third party and for joining him as a 'Defendant' in the Suit on the ground that, the Respondent-Municipal Corporation

has initiated action, under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966, against the Petitioner on the basis of the complaint made by him. It was also submitted that, in the plaint, in paragraph No.8(c), a specific allegation was made against him, as follows :-

“8(c). Though the notice is dated 29.11.2016, it has been served only on 19.12.2016, making it apparent that the notice is issued at the behest of some vested interests, particularly one Mr. Bhavsar, occupier of a flat on the third floor of the building, who has some dispute with the Builder and to settle his dispute with the Builder, is making false and frivolous complaints against members of the Society.”

4. Thus, it was submitted that, the presence of Respondent No.1 was necessary for complete and effectual adjudication of the Suit.

5. The Trial Court has accepted the contentions raised by Respondent No.1 and allowed him to be impleaded in the Suit.

6. While challenging this order of the Trial Court, learned counsel for the Petitioner has, by placing reliance on the Judgment of the Apex Court in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*, (1992) 2 SCC 524, submitted that, merely because the Municipal Corporation has initiated action

against the Petitioner on the complaint of Respondent No.1, he cannot become a necessary or a proper party to the Suit. It is urged that, at the most, his presence can assist the Court in his capacity as a 'witness', if he has any document to show or support the notice issued by the Respondent-Municipal Corporation, but he cannot be either the necessary or proper party.

7. In the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*, (1992) 2 SCC 524, it was held by the Apex Court as under :-

“The object of Rule 10(2) of Order 1 of CPC is not to prevent multiplicity of actions, though it may incidentally have that effect. But that appears to be a desirable consequence of the rule, rather than its main objective. The person to be joined must be one, whose presence is necessary as a party. 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, so 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.”

8. Learned counsel for the Petitioner has invited the attention of this Court particularly to the following observations of the Apex Court that,

“Allowing third party to join in the said Suit is unnecessarily going to expand the scope of the Suit and embarrass the Plaintiff and as a result, the issues not germane to the Suit would be required to be raised. The mere fact that a fresh litigation can be avoided, is no ground to invoke the power under the rule in such cases.”

9. This Court has also in the case of *Shri Uttam R. Gite Vs. Municipal Corporation of Greater Mumbai and Anr.*, in Writ Petition No.6122 of 2013 dated 17th July 2013, held as follows :-

“5. On the basis of the plea raised by Respondent No.2 that the Plaintiff is not the owner of the suit property, but it is the Society, which is the owner of the suit property, the controversy involved in the Suit cannot be widened to decide the inter se dispute between the Plaintiff and Respondent No.2. The Plaintiff is the dominus lites and it is for him to decide as to which relief has to be sought in the plaint and who should be joined as Defendant in the Suit. Merely because the presence of Defendant No.2 is held to be helpful in the correct solution on some controversy involved in the Suit, the application cannot be allowed.

6. It may be true that, at the instance of Respondent No.2-Society, the Corporation has issued notice in question, but that does not make Respondent No.2-Society as necessary or even proper party to the Suit. It is not

necessary for the Corporation to take help of Respondent No.2 to decide whether construction is legal, authorized or not. It is also not the case of nuisance.”

10. Hence, considering the law laid down by the Apex Court in the case of *Ramesh Hirachand Kundanmal (Supra)* and this Court in the case of *Shri Uttam R. Gite (Supra)*, it has to be held that, merely because Respondent No.1 has made some complaints against the Petitioner's construction and on that basis, the Respondent-Municipal Corporation has issued notice against the Petitioner, his presence cannot be necessary either as a proper or a necessary party. At the most, his presence may be helpful to the Court as a 'witness', but his impleadment cannot be forced on the Petitioner, who being the Plaintiff, is a *dominus litis*.

11. The main reason, on which the Trial Court has allowed impleadment of Respondent No.1, is that, the Petitioner himself has, in paragraph No.8 - Ground No.6 of the plaint, made averment that, at the instance of some vested interests, particularly, the present Respondent No.1 - the occupier of a flat on the third floor of the building, who has some dispute with the Builder and to settle the dispute with the Builder, he is making false and frivolous complaints against the members of the Society.

12. The learned counsel for the Petitioner submits that, the Petitioner undertakes to delete paragraph No.8(c) of the plaint.

13. In view thereof, no more cause remains for the impleadment of Respondent No.1.

14. As a result, the Writ Petition is allowed. The impugned order passed by the Trial Court is set aside. In consequence, the Chamber Summons taken out by Respondent No.1 for his impleadment stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]