

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (STAMP) NO. 36457 OF 2017
IN
APPEAL FROM ORDER NO. 920 OF 2015

Ladhabhai Mansion Cooperative Housing Society Limited through it's Chairman/Secretary	...Petitioner
<i>Versus</i>	
Gajanan V Naik & Anr	...Respondents

Ms Preeti Shah, i/b Deepak Jamsandekar, for the Petitioner /
Applicant.

CORAM: G.S. PATEL, J
DATED: 23rd April 2018

PC:-

1. The Review Petition is directed against my order of 16th June 2017. The Review Petitioner is the cooperative housing society and owns the building in which the subject premises are situated on the terrace. These premises were the subject matter of a notice issued by the MCGM. The occupants of those premises moved the City Civil Court. Interim reliefs were rejected by the City Civil Court on 24th June 2015. The occupant, Gajanan Vinayak Naik, filed Appeal from Order shortly thereafter and in a Civil Application in that Appeal from Order, obtained an interim order dated 21st July 2015.

2. Till this time, the society was not a party to the suit. It applied to be joined and an order was passed to that effect on 6th November 2015 i.e. well after the impugned order and well after the Appeal from Order was filed.

3. In my order of 16th June 2017, I allowed the Notice of Motion in terms of prayer clauses (a) and (b), restraining coercive action by the MCGM in respect of Gajanan Naik's terrace structure.

4. It is this that aggrieves the society. However, there is no ground, in my view, made out for a review. There is no error apparent on the face of record, nor are any of the requirements of Section 114 or Order 47 of the Code of Civil Procedure, 1908 met.

5. In my view, all that is required to be done is to give the society, the present Applicant, liberty to file a substantive application or Notice of Motion in the City Civil Court in Gajanan Naik's suit, to which it has obtained an order of being joined on 6th November 2015. The City Civil Court will consider any application made by the society on its own merits, uninfluenced by any observations in my order dated 16th June 2017. I am informed that despite the order of 6th November 2015, Gajanan Naik has not yet impleaded the society as party-Defendant to that suit. The suit will be listed for appropriate directions before the City Civil Court on 3rd May 2018. It will pass necessary directions in regard to the impleadment, including, if thought fit, that if Gajanan Naik does not implement the order and carry out the necessary amendments to join the society as a party Defendant within such time as the City

Civil Court may allow, then a direction may be issued for a peremptory dismissal of the suit itself without further reference to the Court. On this there can be no controversy; that once the City Civil Court has allowed an amendment, it is not for the Plaintiff to refuse to carry out that amendment and to refuse to obey the order of the City Civil Court.

6. The City Civil Court is also requested to give the maximum possible priority to any substantive Notice of Motion or Application that the society may bring for setting aside or vacating the interim protection granted by my order of 16th June 2017.

7. The Review Petition is disposed of with these observations. There will no order as to costs.

(G. S. PATEL, J)