

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1478 OF 2019

Nilang Krishnakant Pathare

...Petitioner

vs.

The Mumbai Municipal Corporation
and Others

...Respondents

Mr. A.S. Khandeparkar a/w. Mr. Amogh Karndikar a/w. Mr. Rajdeep Gude I/b.Khandeparkar & Associates, for the Petitioner.
Mr. Mihir Govilkar a/w. Ms. Shaba Khan and Ms. Kingal Jani I/b. Govilkar & Associates, for Respondent Nos. 2 to 6.
Mr. Santosh Parad, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 03, 2019

P.C.:

. From the record, it appears that this Petition was dismissed for non clearance of the office objections.

2. Mr. Khandeparkar, learned counsel for the Petitioner points out that objections have now been cleared though there may have been some slight delay. Accepting this submission, the order dated 5th March, 2019 made by the Assistant Registrar is set aside and this Petition is restored to the file of this Court.

3. Heard learned counsel for the parties.

4. The challenge in this Petition is to the order dated 22nd January, 2019 by which the learned trial Judge has allowed the

Chamber Summons taken out by the Respondent Nos. 2 to 6 and permitted their impleadment in the suit instituted by the Petitioner against the Municipal Corporation.

5. Mr. Khandeparkar submits that the Respondents are neither necessary nor appropriate parties in the suit. He submits that only the issue in the suit is the action of demolition by implementing the notice under section 354(A) of the Mumbai Municipal Corporation Act, 1881 is not legal and appropriate. He relies on ***Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay, 1992 (2) SCC 524*** to submit that in a suit of this nature, even the owner or the lessee of the suit property is neither necessary nor appropriate party. Mr. Khandeparkar submits that in fact the suit property belongs to the Petitioner and the Petitioner is in the process of challenging the dismissal of the suit and seeking declaration as to ownership. He in fact points out that the First Appeal against the decree is already admitted by this Court.

6. Mr. Govilkar, for Respondent Nos. 2 to 6 defends the impugned order on the basis of reasoning reflected therein.

7. From the perusal of the impugned order as well as the record it is seen that the learned trial Judge has exercised the desertion

and permitted the impleadment of Respondent Nos. 2 to 6. The issue of impleadment of the parties is not an issue as such initial jurisdiction of the Court but is largely a matter of realm exercise of the discretion. In this case, the Petitioner had already instituted a suit against the Respondents in relation to the very property and as such suit came to be dismissed. No doubt, as against the same, the Petitioner has preferred First Appeal which is admitted.

8. In ***Ramesh Kundanmal*** (supra) the Apex Court has observed that the notice which was the subject matter of the said case does not relate to the structure in which *Hindustan Petroleum Corporation Limited* was claiming to be lessee but the notice related to two chattels stated to have been erected unauthorizedly.

9. In the present case, we are concerned with the structure on the suit property in respect of which the Petitioner had earlier filed the suit. Construed from the aforesaid perceptive, it cannot be said that discretion has been exercised unreasonably or the Respondent Nos. 2 to 6 are not even proper parties to the suit. The trial Court has held that the presence of Respondents is necessary in the adjudication of the issues which arises in the suit.

10. Accordingly, there is no jurisdictional error in the impugned order so as to warrant interference in the extra ordinary

jurisdiction under Article 227 of the Constitution of India.

11. This Petition is therefore dismissed.

12. There shall be no order as to costs.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)