

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11352 OF 2014

Anilkumar Ramsubhag Choudhari

..Petitioner.

V/s.

Baban Baburao Pathare & Ors.

..Respondents.

Mr.Sarang S.Aradhya for the petitioner.

Mr.Jaydeep Deo for respondent Nos.12 & 13.

Mr.Bhooshan Mandlik I/b. S.S.Patwardhan for respondent Nos.14 to 16.

CORAM : M.S.SONAK, J.

DATE : MARCH 26, 2019

ORAL JUDGMENT

Heard Mr.Aradhya, learned counsel for the petitioner, Mr.Deo, learned counsel for respondent Nos.12 and 13 and Mr.Mandlik, learned counsel for respondent Nos.14 to 16.

2. Challenge is to the order dated August 5, 2013 by which learned trial Judge has rejected the petitioner's application for impleadment as defendants in the suit.

3. Mr.Aradhya, learned counsel for the petitioner submits

that the petitioner has purchased the suit premises by means of registered sale deed, though, during the pendency of the suit. He submits that by taking into consideration the law laid down by Hon'ble Supreme Court in *Thomson Press (India) Limited V/s. Nanak Builders and Investors Private Limited and others*¹, learned trial Judge was required to allow the application for impleadment.

4. In this case, record indicates that the petitioner has petitioner has purchased the said suit premises along with other 118 other flats similarly placed during the pendency of the suit. This purchase was possible, because, this Court in its order dated January 17, 2013 in Appeal from Order No.292 granted leave to the plaintiffs to sell the flats in the suit property at their own risk subject to the undertaking to be filed in the trial Court placing on record each of the agreements in relation to such flats containing stipulation that they are being sold and the parties have been put to possession subject to the final result of the suit and that no equity can be claimed either by the plaintiffs or the flat purchasers. The plaintiffs were also directed to file undertaking that they would intimate the flat purchases about the pendency of the suit.

5. From the aforesaid, it is quite clear that the petitioner has

¹ (2013) 5 Supreme Court Cases 397

purchased has purchased the flat with an open eyes and with full knowledge about the pendency of the suit. The petitioner, in such circumstances cannot claim any equity.

6. In the present case, the petitioner purchased the said flat on October 13, 2006. However, the application for impleadment was made only after five years i.e. on February 21, 2011.

7. Mr.Aradye has himself relied upon paragraph 25 of the Supreme Court in *Thomson Press (India) Limited (supra)*. The said paragraph reads thus :-

“ 25. In Vidhur Impex, the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though totally strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Para 41 is worth to quoting hereinbelow: (SCC p.413):

“ 41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for

impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the Suit.

41.2. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.

41.5. In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6 However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine

transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the Application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

[Emphasis supplied]

8. The aforesaid paragraph makes reference to the paragraph 41 of decision of *Vidhur Impex and Traders (P) Ltd. V/s. Tosh Apartments (P) Ltd.*². In paragraph 41.5, it is clearly held that in a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

9. In the present case, the petitioner was fully aware of the pending litigation. Besides, the petitioner sought for impleadment after unexplained and unreasonable delay of five years. Therefore, on the basis of the decision in the case of *Thomson Press (India) Limited (supra)* itself, the petitioner is not entitled to any relief.

10. Mr.Deo, learned counsel for respondent Nos.12 and 13 has rightly pointed out that if the petitioner is to be impleaded, then, on the same basis 118 such applicants would also seek impleadment

² (2012) 8 SCC 384

and thereby indefinitely delay the progress in the suit, which was instituted in the year 2006. This is also a valid consideration to deny relief in the facts of this case.

11. Accordingly, there is no case made out to interfere in the impugned order.

12. This petition is dismissed. There shall be no order as to costs.

13. Since the suit is of the year 2006, the learned trial Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of one year from today.

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

(M.S.SONAK, J.)