

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

CIVIL REVISION APPLICATION NO.298 OF 2017

Chandrashekhar Motilal Yadav ... Applicant

Vs.

Maheshprasad Sitaram Mahato and Anr. ... Respondents

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Mr. Ashutosh Kaushik I/b. M/s. Kaushik & Co. for the applicant.

Mr. P.A. Sawant for respondent No.1.

Mr. Santosh Parad for respondent No.2-M.C.G.M.

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CORAM : M. S. KARNIK, J.

DATE : 19th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the applicant.
2. The applicant is the original defendant No.1. The applicant is challenging the order dated 21.1.2017 passed by the Trial Court rejecting the Chamber Summons No.1365 of 2015. The Chamber Summons filed by the defendant No.1 for amendment of written statement is rejected.
3. The plaintiff filed a suit for declaring the agreement dated 5.12.2002 is illegal, bad in law and unenforceable upon the plaintiff and cannot be acted upon as null and void. The prayer is made to declare that the allotment dated 30.1.2004 issued in

favour of defendant No.1 in respect of the suit premises is bad in law, illegal and cannot be acted upon as the same is null and void. The defendant No.1 filed the written statement in which it stated that he has no concern with the suit premises. Learned counsel for the applicant would submit that neither the defendant No.1 is in occupation of the suit premises nor he is concerned with the same. Further he has no concern with the allotment letter dated 30.1.2004 mentioned in prayer clause (b).

4. Learned counsel for the applicant would submit that he filed a written statement only because ultimately if some order is passed in the suit, the decree may affect the defendant No.1. By the said Chamber Summons, the defendant No.1 wanted to bring on record certain documents which he has received from the Corporation showing that the plaintiff is not entitled to the allotment in respect of the suit property.

5. The Chamber Summons is rejected by the Trial Court holding that the issues have been framed and even the defendant No.1 started the cross examination of the plaintiff's witness.

Thereafter before completing the cross examination of the plaintiff's witness, the Chamber Summons is filed for amending the written statement.

6. In the facts of the present case when the defendant No.1 has taken specific plea in the written statement that he is not at all concerned with the suit premises in question nor he is in possession of the suit premises then there is no question of the defendant contending that the plaintiff is not entitled to the allotment of the suit premises in question. The lis is primary between the plaintiff and Corporation.

7. I have gone through the order passed by the Trial Court. Learned counsel for the applicant would rely on the decision of the Hon'ble Supreme Court in the case of **Pankaja and another Versus Yellappa (Dead) By LRs. And others (2004) 6 Supreme Court Cases 415** and this Court in the case of **Vijay Agarwal and others Vs. Harinarayan G. Bajaj and others 2013 (4) Mh.L.J. 298** and **Maruti Vithoba Kulal and Ors. Vs. Nivrutti Deoram Kulal and Ors. 2018(5) Mh.L.J. 290** in support of his submissions.

8. Considering the facts of the present case, I see no reason to interfere with the order passed by the Trial Court when it is the specific stand of the petitioner that he is not concerned with the suit premises and that he is not concerned with the allotment, the trial Court rightly opined that there is no reason to allow amendment where the petitioner now wants to contend that plaintiff is not entitled to the allotment of the suit premises. However, it is open for the applicant to apply to the Trial Court for deleting himself as party defendant as it is his contention that he is not concerned with the suit premises nor he is in possession of the same. If the said application is made, the same shall be considered by the Trial Court on its own merits.

9. The Civil Revision Application is rejected with no order as to costs.

(M. S. KARNIK, J.)