

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6832 OF 2016

Ismail H. Shaikh and anr. .. Petitioners
vs.
M/s. Lokhandwala Builders and ors. .. Respondents

Mr. A.P. Shinde for the Petitioners.
Mr. A.S. Kulkarni for Respondent Nos.1 to 3
Mr. D.G. Dhanure for Respondent Nos.4 and 5.

CORAM : M. S. SONAK, J.
DATE : 11 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. A.P. Shinde for the petitioners and Mr. A.S. Kulkarni for respondent Nos.1 to 3 and Mr. D.G. Dhanure for respondent Nos.4 and 5.

2] Rule. With the consent of and at the request of counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 18th March 2016 by which learned Trial Judge has dismissed the petitioners' application for seeking leave to amend the plaint.

4] The application seeking leave to amend the plaint was taken out prior to the commencement of the trial. The

application seeks to bring on record certain subsequent developments, in terms of which the defendants have not only completed the construction of the suit property, but further created certain third party rights in favour of purchasers of apartments in the said construction. Amendment also seeks to implead these purchasers as defendants in the suit on the ground that they are necessary party.

5] The impugned order records that since the construction and the sale in favour of purchasers was during the pendency of suit, such transactions will be hit by *doctrine of lis pendence* as provided in section 52 of the Transfer of Property Act. Learned Trial Judge has reasoned that accordingly, there is no necessity to grant leave to amend or even to implead the purchasers as parties to the suit.

6] Mr. Kulkarni, learned counsel for respondent Nos.1 to 3, defends the impugned order on the basis of reasoning reflected therein. In addition, he points out that by order dated 6th October 2016 made in this petition, respondent

Nos.1 to 3 were directed to state whether they have informed the subsequent purchasers about pendency of the suit. On instruction, Mr. Kulkarni states that such information has been furnished to the subsequent purchasers. He, therefore, submits that there is absolutely no necessity to implead the subsequent purchasers as parties to the suit. Mr. Kulkarni also states that the Municipal Corporation has issued a completion Certificate in respect of construction certifying that the construction is complete in all respect. For all these reasons, Mr. Kulkarni submits that this petition may be dismissed.

7] According to me, the reasoning of learned Trial Judge cannot be accepted. It is true that the *doctrine of lis pendens* might apply to the subsequent purchasers. However, that does not mean that the plaintiff has to be precluded from impleading subsequent purchasers as defendants, if the plaintiffs so desire. Ultimately, the plaintiffs are *dominus litus*. The amendment seeks to place on record developments which took place during pendency of the suit. The application seeking leave to amend was made prior to

commencement of the trial. Accordingly, there was no good reason to reject the application seeking leave to amend.

8] Though, respondent Nos.1 to 3 may have informed the subsequent purchasers about pendency of the suit that by itself, does not mean that the plaintiffs should be prevented from impleading such subsequent purchasers in the suit or seeking any reliefs *qua* them.

9] For all the aforesaid reasons, the impugned order dated 18th March 2016 is hereby set aside and the petitioners' application at Exhibit-40 is hereby allowed. Necessary amendment to be carried out within a period of four weeks from the date of this order is uploaded on the website.

10] Rule is made absolute to the aforesaid terms. There shall be no order as to costs.

11] It is made clear that all objections on the part of the respondents on merits are specifically kept open.

(M. S. SONAK, J.)