

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

WRIT PETITION NO.8594 OF 2016

Harbin Navinchandra Jhaveri .. Petitioner

V/s.

Adarsh Developers Thru its partner
Jethalal Devshi Shah and Ors. .. Respondents

Ms.Sonal H. Jhaveri, petitioner present in person

Ms.Leena Shah I/b M/s.Shah and Furia Associates for the
respondent no.1

Mr.Santosh Parad for the respondent nos.31 and 32

**CORAM: K.K. TATED, J
DATED : FEBRUARY 26, 2019**

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 15.07.2014 passed by Bombay City Civil Court at Dindoshi, Borivali Division, Mumbai in Chamber Summons No.573 of 2013 in L.C. Suit No.1757 of 2010 directing Petitioner to amend the Suit and join the intervenor as original defendant no.3 Aarsh Developers through its partner Jethalal D. Shah.

3 Party in person submits that they filed L.C.Suit No.1757 of 2010 challenging the notice under section 354 Mumbai Municipal Corporation Act, 1888 dated 25.06.2010 issued by the Respondent Corporation. She submits that they made following prayers in the Suit:

“(a) that this Hon’ble Court be pleased to call for records and proceedings of ch/s No.573 of 2013 in L.C. Suit No.1757 of 2010 filed before Hon’ble City Civil Court at Dindoshi.

(b) that pending the hearing and final disposal of this Writ Petition, the Hon’ble Court be pleased to stay the effect, operation, implementation and execution of the said impugned order dated 15.7.2014 passed by City Civil Court, Dindoshi Branch, Borivali in ch/s 573/13 in said suit.

(c) that this Hon’ble court be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or Direction in the nature of Certiorari or any other Writ or Order Direction as this Hon’ble court may deem fit and proper to quash and/or set aside the impugned order dated 15.7.2014 passed by City Civil Court Dindoshi branch in ch/s 573/13 and not to allow the said original Applicant to be party in L.C.Suit No.1757 of 2010.

(d) For Interim and ad-interim reliefs in terms of prayer clause (b) above.

(e) Cost of this petition be provided for.

(f) Such further and other reliefs as the nature and circumstances may require or as this Hon'ble court may deem fit and proper in the facts and circumstances of the case."

4 Party in person submits that the Trial Court allowed the Chamber Summons No.573 of 2013 preferred by Respondent no.1 mainly on the ground that intervenors are owner of the suit property. In support of this contention, party in person relies on paragraph 7 of the impugned order which reads thus:

"7. However, copy of registered agreement attached with this chamber summons clearly indicates about applicant's right, title and interest in the suit property. I agree with the applicant's submission that the applicant being the landlord of the suit premises, the applicant's interests are also involved in the suit and applicant is a necessary party to the suit. "

5 Party in person submits that they are disputing

ownership of Respondent no.1 intervenor in respect of suit property. Therefore, there is no question of joining Respondent no.1 as defendant in pending Suit as owner of the suit property. She further submits that even the Corporation has not accepted Respondent no.1 as owner of the suit property. Hence, impugned order is required to be set aside. She submits that they have no objection if Respondent no.1 Developer is joined as defendant in pending Suit just because their name is shown in the Notice under section 354 of the Mumbai Municipal Corporation Act, 1888 issued by Respondent Corporation.

6 On the other hand, the learned counsel for the Respondent no.1 vehemently opposed the present Writ Petition. She submits that another litigation is pending between the Petitioner and Respondent no.1 in Small Causes Court at Mumbai. In that matter, the Petitioner original plaintiff themselves made Application for joining Respondent No.1 as party defendant. Therefore, there is no question of entertaining the present Writ Petition on the ground that Petitioner is not admitting Respondent no.1 as owner of the suit property.

7 At the same time, advocate for Respondent made a statement across the bar that suit structure is already demolished on 22.06.2018 by evicting the Petitioner and members of the Society.

8 Heard both the sides at length.

9 It is to be noted that name of Respondent no.1 is already shown in notice issued by the Corporation under section 354 of the Mumbai Municipal Corporation Act, 1888. Therefore, Respondent no.1 is also proper party in the suit filed by the Petitioner Society before the Bombay City Civil Court at Bombay. Whether Respondent no.1 is owner of suit property or not, that be decided at appropriate stage.

10 In any case, there is no question, in the present proceedings, to decide whether Respondent no.1 is owner of suit property or not. Considering these facts, and as the Petitioner have no objection to join Respondent no.1 as party defendant in the suit just because their name appears in notice under section 354 issued by the Corporation. Therefore, Writ Petition is disposed of with following order:

- a. Order dated 15.7.2014 passed by Bombay City Civil Court at Dindoshi, Borivali Division, Mumbai in Chamber Summons No.573 of 2013 in L.C. Suit No.1757 of 2010 is confirmed.
- b. The issue about ownership of Respondent no1 to be decided at appropriate stage in appropriate proceeding.
- c. Writ Petition stands disposed of accordingly.

d. No order as to costs.

(K.K. TATED, J.)