

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.14325 OF 2016**

Graphic Art

.. Petitioner

Versus

Designated Officer, BMC and Ors.

.. Respondents

Mr. Atul S. Singh for petitioner.

Mr. Santosh Parad for respondent Nos.1 and 2.

Mr. S.S. Redekar for respondent No.3.

**CORAM : K.K. TATED, J.**

**DATE : 28 FEBRUARY 2019.**

**P.C:-**

. Heard learned Counsel for parties.

2. By this writ petition under Article 227 of the Constitution of India, petitioner/original plaintiff is challenging the order dated 08.04.2015 passed by the Bombay City Civil Court, Bombay in Chamber Summons No.732 of 2014 in Long Cause Suit No.2 of 2014 allowing respondent No.3-third party's application for joining them as a party defendant in suit.

3. Learned Counsel for petitioner/original plaintiff submits that, they have filed Long Cause Suit No.2 of 2014 in the Bombay City Civil Court at Bombay challenging 351 notice under Mumbai Municipal Corporation Act, 1888 and the order dated 20.12.2013 passed by the respondent Municipal Corporation Officer in respect of unauthorized construction. He submits that on the basis of the complaint filed by the respondent No.3, the

Corporation issued 351 notice under the Mumbai Municipal Corporation Act, 1888 in respect of unauthorized construction of “Ground + One”, which reads thus :

“Sub:- Unauthorized construction of “Ground + One” storeyed structure with B.M. Walls, Ladi Coba Slab, A.C. Sheet Roof and M.S. rolling shutter, having size 80'0" x 12'0" x 18'0" (ht) situated between M/s. Radiant Engineering Works & M/s. Kneems International at Sunmill Compound, Lower Parel, Mumbai- 400013.”

4. The learned Counsel for the petitioner submits that in the suit, the main prayer of the petitioner is to set aside the 351 notice issued by the Corporation and the order passed by their officer dated 20.12.2013. He submits that the trial Court allowed the Chamber Summons No.732 of 2014 only on the ground that respondent No.3 is a complainant in respect of unauthorized construction and he is his neighbor to the suit property. He submits that the dispute is between the petitioner and respondent Nos. 1 and 2, there is no question of permitting the respondent No.3 to join him as a party defendant in the pending suit. Hence, the impugned order is required to be set aside.

5. On the other hand, the learned Counsel appearing on behalf of respondent No.3 vehemently opposed the present writ petition. He submits that because of complaint filed by respondent No.3, Corporation issued 351 notice and passed the order dated 20.12.2013 directing petitioner to remove unauthorized construction. Hence, the respondent No.3 is necessary party. These facts are considered by the trial Court at the time of passing the impugned order dated 08.04.2015. He further submits that

even respondent No.3 have their structure in the same vicinity where the petitioner has carried out unauthorized construction. Therefore, there is no substance in the present writ petition and same is required to be dismissed with cost.

6. I heard both the sides at length. It is to be noted that in the present proceedings, issue is whether the complainant, on who's instance the Corporation issued notice under Section 351 of the Mumbai Municipal Corporation Act, 1888, can be joined as a party defendant. This issue is fully covered in the matter of **Aijaz Alias Azaz Mohammed Shaikh Vs. Municipal Corporation of Greater Bombay**, reported in **2017 (6) All Maharashtra Reporter 420**, paragraph 14 of the said judgment reads thus :

“14. In the instant case, as indicated above, it is on account of the persuasion of the Respondent No.2/Applicant that the notice under Section 351 has been issued by the Corporation, the same is borne out by the record.

Since the buildings are standing side by side with only a house gully of about 5 to 6 ft separating the two of them, since it is the case of the Respondent No.2 that the alleged unauthorized construction in question being put on the same level as the premises occupied by the Respondent No.2, the same would have the effect of affecting the light and air of the Respondent No.2 and other occupants of the said building. The Respondent No.2 therefore can be said to be a person vitally interested in the subject matter of the said suit. This is not a case where a total stranger or third party is seeking to intermeddle in a suit 11 wp-9622.11.sxw with ulterior motives. The Respondent No.2 in the capacity of a neighbour would be entitled to bring to the notice of the Court, the violation of the Municipal laws, or the development control regulations, which has the effect of affecting her rights. Though it is the case of the Petitioner that the proceedings under the MRTP Act have also been initiated against the Respondent No.2, in my view, the said fact would have no relevance in so far

as Respondent No.2 being a party to the suit in question is concerned. In my view, therefore, the Respondent No.2/Applicant is a necessary party to the said suit.”

7. In view of these facts, I am of the opinion that the petitioner has made out case for allowing this writ petition. Hence, following order :

- a) Order dated 08.04.2015 passed by the Bombay City Civil Court, Bombay in Chamber Summons No.732 of 2014 in Long Cause Suit No.2 of 2014 is set aside.
- b) The trial Court to decide the Long Cause Suit No.2 of 2014 on its own merits.
- c) Writ petition allowed accordingly.
- d) No order as to costs.

(K.K. TATED, J.)