

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

WRIT PETITION NO.620 OF 2016

M/s. Fiza Construction Company

Through its proprietor

Mr. G.R. Mujawar

... Petitioner

Vs.

M/s. Shivshankar Developers and Builders

Through Partners

Mr. Satish Shivshankar Tripathi and Ors.

... Respondents

.....

Mr. U.P. Warunjikar for the petitioner.

Mr. Jatin Sahai I/b. Mr. Vikram Chavan for respondent No.1.

Mr. Hemant Ghadigaonkar for respondent Nos.2A to 2G, 3 to 5, 6A, 6B and 7.

Ms. Namita M. Mestry I/b. Mr. Nitin V. Gangal for respondent Nos.8 to 10.

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CORAM : M. S. KARNIK, J.

DATE : 3rd OCTOBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The order challenged in this petition is passed below Exhibit 76 rejecting the application made by the petitioner-third party for impleading it as party defendant in the suit filed by the present respondent No.1. The application was rejected, as according to the Trial Court the petitioner-third party can not said to be a necessary party.

3. Learned counsel for respondent No.1 submitted that he has no objection if the impugned order is set aside. He further states that he has no objection if the application Exhibit 76 is allowed and the petitioner-third party is impleaded as party defendant in the suit.

4. In this view of the matter, the impugned order is set aside. Application Exhibit 76 is allowed.

5. The petition is allowed with no order as to costs.

6. Learned counsel for respondent No.1 would submit that in respect of decree which the third party is claiming to be in his favour, the third party has filed execution proceedings. He would submit that he may be permitted to obstruct this decree.

7. Needless to mention that it is always open for respondent No.1 to make an appropriate application before the Executing Court. The application shall obviously be considered on its own merits and in accordance with law.

(M. S. KARNIK, J.)