

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2963 OF 2017

Santosh Tukaram Pawar
Age – 40 years, Occu. Business
Residing at 159, Dharmsi Line, Murarji
Peth, Solapur.

...Petitioner

Versus

1. Sarajudevi Rajgopal Jaju
Age – 56 years, Occupation - Business,
Shop No.6B, Jawaharlal Neharu
Vastigraha, Park Chowk, Solapur.
2. Shashank Suresh Kulkarni
Age – 39 years, Occupation - Business,
Residing at 89 C, Siddheshwar Peth,
Solapur.

...Respondents

Mr. Anand S. Kulkarni, for the Petitioner.
Mr. Rajshekhar S. Alange, for Respondent no.1.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 15th JULY, 2019.
PRONOUNCED ON: 18th JULY, 2019.

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties, heard finally.
2. By this petition under Article 227 of the Constitution of India, the Petitioners take exception to an order passed by the learned Ad-hoc District Judge – 3, Solapur, on 4th November, 2016, on an application (Exhibit 11) for impleadment as a party appellant in Civil Appeal No.121 of

2015, whereby the prayer of the Petitioner to implead him as an appellant came to be rejected.

3. The background facts can be summarised as under:

(A) Sarajudevi Rajgopal Jaju - Respondent no.1 herein, instituted a suit against Shashank Suresh Kulkarni - Respondent no.2 herein, bearing Regular Civil Suit No.519 of 2013, for perpetual injunction restraining Respondent no.2 from causing obstruction to her possession over, and enjoyment of, shop premises bearing Shop No.6B, Jawaharlal Neharu Vastigraha, Park Chowk, Solapur (hereinafter referred to as 'suit shop'). Respondent no.1 had also sought a mandatory injunction against Respondent no.2 for providing electric supply to the said suit shop.

(B) In the plaint it was avered that the said suit shop was a part of shop no.6, of the shopping complex owned by Zilla Parishad, Solapur. Shop no.6 was let out to Respondent no.2. Respondent no.2 had inducted Respondent no.1 as a sub-tenant in the suit shop for ten years. Respondent no.2 had accepted security deposit of Rs.2,00,000/- and has been collecting monthly rent from Respondent no.1. A dispute arose as Respondent no.2 sought additional security deposit and rent at an enhanced rate. Respondent no.2 threatened to

evict Respondent no.1 by unlawful means and even disconnected the electric supply to the suit shop. Thus Respondent no.1 was constrained to institute the suit.

(C) The said suit proceeded *ex parte*. By judgment and order dated 17th January, 2014, the said suit came to be decreed. Respondent no.2 was directed to forthwith restore electric supply to the suit shop. Respondent no.2 was also directed, by a decree of perpetual injunction, not to cause obstruction to the possession of Respondent no.1 over the suit shop.

(D) Respondent no.2 preferred an appeal bearing Appeal No.121 of 2015, assailing the said judgment and decree.

(E) In the meanwhile, the Petitioner claimed to have acquired interest in the suit shop. The Petitioner claimed that the Zilla Parishad, Solapur, had permitted the transfer of entire shop no.6 in favour of the Petitioner. Respondent no.2 also gave consent for transfer of the leasehold rights in favour of the Petitioner. Accordingly, a lease agreement came to be executed between the Petitioner and Zilla Parishad, Solapur, on 29th June, 2016. Respondent no.2, the original lessee, was also informed by the Zilla Parishad, Solapur, vide

communication dated 27th July, 2016 to hand over the possession of shop no.6.

(F) Armed with the transfer of the leasehold rights, the Petitioner preferred an application to implead himself as an appellant in Civil Appeal No.121 of 2015, preferred by Respondent no.2, being aggrieved by the *ex parte* decree passed in favour of Respondent no.1, under Order I Rule 10(2) of the Code of Civil Procedure, 1908.

(G) The learned District Judge, after considering the application and the submissions in support thereof, and in opposition thereto, was persuaded to reject the application by the impugned order dated 4th November, 2016.

4. I have heard Mr. Kulkarni, the learned Counsel for the Petitioner and Mr. Alange, the learned Counsel for Respondent no.1 – original plaintiff.

5. An earnest endeavour was made on behalf of the Petitioner to demonstrate that the learned District Judge committed a manifest error in non-suiting the Petitioner, who has a direct interest in the subject matter of the appeal. Since Respondent no.2 – original defendant has given consent to transfer the leasehold rights in favour of the

Petitioner and, consequently, lost interest in prosecuting the appeal, the denial of the opportunity to the Petitioner to prosecute the said appeal would cause serious prejudice to the rights of the Petitioner. It was urged that in view of the subsequent developments the Petitioner can not be said to be a stranger to the dispute between Respondent nos.1 and 2. Having regard to the nature of the claim of Respondent no.1, the legality, propriety and correctness of the decree, which is under challenge in Appeal No.121 of 2015, can not be effectively adjudicated in the absence of the Petitioner, urged the learned Counsel for the Petitioner.

6. In opposition to this, it was urged on behalf of Respondent no.1 that the presence of the Petitioner in the appeal is wholly unwarranted for effectual and complete adjudication of the dispute between the parties to the said appeal. Supporting the impugned order, the learned Counsel for Respondent no.1 submitted that the claim of the Petitioner that he has been in possession of entire suit shop since 1st August, 2013, works out the retribution of his claim that he acquired interest in the suit shop in pursuance of the lease granted by Zilla Parishad, Solapur, in the year 2016.

7. It is trite law that the provisions contained in Order I Rule 10(2) of the Code have a wide amplitude. However, the Court does not have unfettered jurisdiction to add a party to the proceedings. Rather than being a matter of initial jurisdiction, the addition of a party to the proceeding is in the realm of judicial discretion to be exercised in the facts and circumstances of the given case primarily for the purpose of a complete and effective adjudication of the dispute.

8. On the aforesaid touchstone it has to be seen whether the learned District Judge justifiably exercised the discretion not to implead the Petitioner as a party appellant to Appeal No.121 of 2015.

9. To begin with, it would be advantageous to note the undisputed facts. It is indisputable that the suit shop is owned by Zilla Parishad, Solapur. Respondent no.2 – defendant was the original lessee thereof. Respondent no.1 was inducted therein by Respondent no.2. The Zilla Parishad, Solapur, has proceeded to terminate the lease agreement with Respondent no.2. In the wake of the dispute between Respondent nos.1 and 2, Respondent no.1 had instituted a suit for perpetual and mandatory injunction against Respondent no.2. The said suit came to be decreed holding,

inter alia, that Respondent no.1 is in possession of the suit shop. Evidently, Zilla Parishad, Solapur was not a party to the said suit.

10. At this stage, it is necessary to note as to how the Petitioner acquired interest in the suit shop. It seems that on 21st January, 2016, the Petitioner had sought transfer of shop no.6 by submitting an application to the Chief Executive Officer, Solapur. The original lessee gave his consent for the said transfer by application dated 21st January, 2016. An agreement was executed between the Petitioner and Zilla Parishad, Solapur, on 29th June, 2016. Vide communication dated 27th July, 2016, the original lessee – Respondent no.2, was directed to hand over the possession of shop no.6 to the Petitioner. Surprisingly in the agreement executed between the Petitioner and Zilla Parishad, Solapur, it was mentioned that the Petitioner has been in possession of the suit shop since 1st August, 2013 and the lease would be valid for ten years, from 1st August, 2013 to 30th July, 2023.

11. In contrast to this, the decree in Regular Civil Suit No.519 of 2013 came to be passed on 17th January, 2014. Evidently, the lease of suit shop came to be granted in favour

of the Petitioner in the year 2016. It is interesting to note that, on 20th January, 2016 itself a separate agreement was executed between the Petitioner and Respondent no.1. The said agreement refers to the fact that vide notice dated 2nd June, 2015 the Zilla Parishad, Solapur, had terminated the lease of Respondent no.2, however, Zilla Parishad had yet not taken any action for recovery of possession. Under the said agreement, Respondent no.2, professed to deliver the possession of entire suit shop. It is abundantly clear that the Petitioner and Respondent no.1 have proceeded with the transaction of transfer of leasehold rights as if Respondent no.1 is not in picture. The Petitioner and Respondent no.2 have simply feigned ignorance about the presence of Respondent no.1 in a portion of the suit shop and the passing of the decree impugned in Civil Appeal No.121 of 2015. The claim of the Petitioner that he has been in possession of the shop premises since August, 2013, however, runs counter to these documents which were executed in the year 2016.

12. At this juncture, the nature of the suit between Respondent nos.1 and 2 assumes critical significance. It was a suit based on possession over a portion of the suit shop, in

the capacity of a sub-lessee of Respondent no.2. Admittedly, the landlord, Zilla Parishad, Solapur, was not a party to the said suit. The leasehold rights of the original lessee have come to an end. The question as to whether Respondent no.1 was lawfully inducted in a portion of suit shop by Respondent no.2, has not been adjudicated upon in the said suit. On the contrary, the trial court found that the term of the agreement executed between Respondent nos.1 and 2 had come to end on 31st May, 2012. However, since Respondent no.1 was found to be in possession of the suit shop and obstruction to the possession at the hands of Respondent no.2 was established, the trial court proceeded to pass a decree for perpetual and mandatory injunction. The entitlement of Respondent no.1 to remain in possession of the suit shop on the strength of the alleged sub-lease by Respondent no.2 has not been adjudicated upon by the trial court.

13. In the circumstances, the learned District Judge was justified in recording a finding that the impleadment of the Petitioner as a party appellant to the said appeal is not necessary for the determination of the legality, propriety and correctness of the decree assailed therein.

14. The Petitioner or for that matter the landlord, Zilla Parishad, Solapur, are, however, not precluded from initiating appropriate proceeding against Respondent no.1, on the strength of the transfer of the leasehold rights in favour of the Petitioner.

15. In the aforesaid view of the matter, no interference is warranted in the impugned order in exercise of writ jurisdiction. The petition, therefore, deserves to be dismissed, and accordingly stands dismissed.

16. Rule discharged.

17. The learned Counsel for the Petitioner seeks continuation of ad-interim relief, in the nature of stay to the hearing of Civil Appeal No.121 of 2015, pending before the District Court, Solapur, granted by this Court by order dated 9th March, 2017, for a further period of eight weeks.

18. For the reasons recorded in the judgment and having regard to the nature of the proceedings pending before the District Court, Solapur, the prayer for extension of ad-interim relief stands rejected.

[N. J. JAMADAR, J.]