

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4976 OF 2019

Cyril Thomas Macwan

..Petitioner.

V/s.

Rizvi Estates & Hotels Pvt. Ltd. & Ors.

..Respondents.

Mr.H.T. Pawar for the petitioner.

Mr.Akash Rebello with Mahesh Mishra I/b. Ravi Thankajan for respondent No.1.

Ms.Sheetal Rane for respondent No.2-MCGM.

Mr.Ameya Deosthale I/b. Hariani & Co. for respondent No.3.

Mr.S.P.Thorat for respondent No.4 -SRA.

CORAM : M.S.SONAK, J.

DATE : APRIL 23, 2019

ORAL JUDGMENT

Heard Mr.Pawar, learned counsel for the petitioner, Mr. Rebello, learned counsel for respondent No.1, Ms.Rane, learned counsel for respondent No.2-MCGM, Mr.Deosthale, learned counsel for respondent No.3 and Mr.Thorat, learned counsel for respondent No.4-SRA.

2. Challenge in this petition is to the order dated November

19, 2018 by which the petitioner's chamber summons for impleadment in L.C. Suit No.3023/2006 came to be dismissed.

3. Mr.Pawar, learned counsel for the petitioner submits that the petitioner is the ex-chairman of the Pali Pereirawadi SRA Co-operative Housing Society Ltd. and an RTI activist. He submits that he has ample material which will assist in the resolution of the issues raised in the suit. He submits that the suit property has already been declared as a slum in the year 1977. He submits that this fact is being suppressed by both the plaintiff as well as the defendants in the suit. He submits that in the connected contempt petition, this Court has already held that the plaintiff in the suit is following improper remedy now that the suit property is already declared to be slum area. He points out that on account of the pendency of this suit, the Slum Rehabilitation Authority (SRA) is not issuing no objection for development of the suit property. He points out that the petitioner is, therefore, affected by the pendency of the suit. He relies on the decision in *Milind Dattatraya Sugavkar (supra) V/s. Municipal Corporation of Greater Mumbai & Anr.*¹ and submits that it supports the petitioner's plea in the chamber summons seeking impleadment. For all these reasons, he submits that the impugned order dated November 19, 2018 may be set aside and the chamber summons taken out by the

¹ 2006(1) All MR 488

petitioner be made absolute.

4. Ms.Rane, learned counsel for respondent No.1 defends the impugned order on the reasoning reflected therein. She points out that the petitioner has impleaded respondent Nos.3 and 4 to this petition even though they are yet to be impleaded as defendants in the suit.

5. Mr.Pawar points out that respondent No.1-plaintiff has already taken out chamber summons seeking impleadment and, therefore, they have been impleaded as respondents in this petition. He submits that if respondent Nos.3 and 4 can be impleaded as parties to the suit, there is no reason as to why the petitioner also cannot be a defendant in the suit.

6. According to me, based upon all the contentions raised by Mr.Pawar, it cannot be said that the petitioner is either a necessary or proper party to the suit. Without the petitioner establishing that he is a necessary or a proper party to the suit, there is no question of seeking impleadment on the ground that the petitioner is having in his possession ample material which would perhaps expose both respondent No.1 (plaintiff) as well as the MCGM (defendant) in the suit. Learned trial Judge was quite right in observing that that if the petitioner is permitted to be impleaded as a defendant in the suit, then, the petitioner will insist upon sorting out the dispute which he has with respondent No.1 (plaintiff) which disputes are alien to the issues

involved in L.C. Suit No.3023/2006.

7. In the present case, respondent No.1 has urged some cause of action against the MCGM in the context of the proposed action to evict respondent No.1 (plaintiff). The issue as to whether respondent No.1 is really in possession of the suit property or not or the issue as to whether respondent No.1 has a good case in the suit or not are quite irrelevant at this stage for deciding whether the petitioner herein is a necessary party. The issue whether suit property has been declared as a slum area or whether the petitioner is an ex-chairman of the SRA Co-operative Housing Society, are really not issues which are relevant for deciding whether the petitioner herein is a necessary and proper party to the suit.

8. Learned trial Judge has correctly exercised discretion in the matter and dismissed the chamber summons taken out by the petitioner. If the petitioner has any independent grievance as against respondent No.1 or against the MCGM, the petitioner is undoubtedly free to take such an action as may be permissible under the law. However, without the petitioner establishing that he is either a necessary or a proper party to the suit, the petitioner cannot insist upon his impleadment in the said suit. Ultimately, Plaintiff is the *dominus litis* in the matter. Further, if ultimately, the Court comes to the conclusion that necessary parties are not joined in the suit, the Court will consider

whether the suit is required to be dismissed for want of necessary party to the suit

9. The decision in the case of *Milind D. Sugavekar (supra)* is distinguishable. In that case, the society which had applied for impleadment had not only not established that it had substantial interest in the dispute but further, it was the owner of the suit property. The society had also established that the demolition notices were issued by the Corporation on the basis of complaints made by the society. No such facts are available in the present case. Therefore, the decision in the case of *Milind D. Sugavekar (supra)* is distinguishable.

10. For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)