

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11029 OF 2019
IN
EXHIBIT NO. 131
IN
R.A.D. SUIT NO. 1810 OF 2004**

Mr. Monaram Samnaji Mewada

**.....Petitioner
Orig.Plaintiff**

V/s.

The Maneckji Nowroji Sett
Charities Trust

**....Respondents
Orig.Defendants**

AND

Mumbai Metro Rail Corporation
Ltd.

**....Respondent/
Orig. Respondent**

* * * *

Mr. S.P. Srivastava, Advocate for the petitioner.

Mr. Roop Basu i/by. M/s. Law Point, Advocate for
respondent no.10-MMRCL.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 16th March, 2021.

P.C. :

1. Heard learned Counsel for the petitioner and learned Counsel for the respondent.

2. Petitioner is the plaintiff in R.A.D. Suit No. 1810/2004 pending in the Court of Small Causes at Bombay. He seeks a declaration of tenancy in respect of Shop No.1 (“the suit property” for short). Pending suit, Mumbai Metro Rail Corporation Ltd. (MMRCL), acquired the suit property for its project. Defendant no.9 in the suit “M/s. Vasav Enterprises Limited” is the landlord. One, Mrs. Lilavanti Jadhavji Chheda (defendant no.8) claims her right and interest in the suit property, in respect of which, the petitioner has filed the subject RAD Suit. It appears, after the property was acquired by MMRCL, Mrs. Lilavanti Jadhavji Chheda, had filed a Writ Petition before this Court wherein the following order was passed :

“(i) MHADA shall not handover the permanent alternate premises (shop) in lieu of original Shop

No.1 to either of the parties i.e. the petitioner or the Respondent No.3 and keep the decision qua the tenancy as well as the occupation in abeyance until the Small Causes Court, Mumbai decides the same in proceeding before it.

(ii) The Respondent No.1 MHADA shall handover the possession of the new premises to the party who ultimately succeeds in the proceeding filed before the Small Causes Court, Mumbai.

(iii) The Writ Petition is accordingly disposed of.”

3. In consideration of the facts aforesaid, the plaintiff has filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 to implead “MMRCL” as a party defendant in the subject suit. The said application (Exhibit-131) was rejected by the learned Judge, vide order dated 23rd August, 2019. Feeling aggrieved, the plaintiff has filed the Writ Petition.

4. Order 1 Rule 10(2), empowers the Court at any stage of the proceedings, either upon or without application

of either party, to add a person as a defendant, as may be necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit. In the case at hand, the suit property has been acquired by MMRCL. Thus in view of the acquisition of the suit properties, M/s. Vasav Enterprises Limited, ceases to be the landlord. However, the dispute in relation to the suit property, between Mrs. Lilavanti Jadhavji Chheda and the plaintiff, is to be adjudicated. It is contended that MMRCL is not the necessary party to the dispute nor is likely to assist the Court in adjudicating the dispute, the Corporation is neither a proper nor a necessary party.

5. Mr. Basu, learned Counsel for the MMRCL, has rightly submitted that the Corporation may not be of any assistance to the Court in adjudicating the dispute in relation to the suit property. However, in the given set of facts, that the suit property has been acquired and vest in

MMRCL, in my view, the impleadment of the MMRCL as a proper party would be just and proper.

6. In view of the facts and for the reasons set out hereinabove, the impugned order dated 23rd August, 2019 is set aside. The application below Exhibit-131 in RAD Suit No. 1810 of 2004, is allowed.

7. The Writ Petition is allowed and disposed of, in the aforesaid terms.

8. Writ Petition No. 11212/2019 be separated and de-tagged from the present Writ Petition.

Neeta
S.
Sawant
Digitally
signed by
Neeta S.
Sawant
Date:
2021.03.17
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+0530

(SANDEEP K. SHINDE, J.)