

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7432 OF 2022**

M/s. Sai Amrut Co-op Hou. Soc.Petitioner
V/s.
Meera Chandrabhan Thakur and Ors.Respondents

* * * *

Ms. Preeti Walimbe, Advocate for the petitioner.

Dr. Mr. Pawan Kumar Pandey, Advocate for respondent no.1.

Coram : Sandeep K. Shinde, J.

Thursday, 15th September, 2022.

P.C. :

1. Heard learned Counsel for the parties. Rule, rule made returnable forthwith by consent of the Counsel.
2. This Writ Petition challenges the order passed by the IInd Joint Civil Judge Senior Division, Kalyan on an impleadment application of the petitioner herein. The impleadment application was made in Regular Civil Suit No. 309/2016 instituted by the respondent no.1 herein. The petitioner is a Co-operative Housing Society; whereas respondent is the Promoter-Builder within the meaning of

Section 2(c) of the Maharashtra Ownership of Flats Act. Petitioner's case that, the respondent-builder made unauthorised additional construction in the building causing obstruction and nuisance to its members. Thus, in March, 2016, the flat purchasers requested the Corporation to remove/demolish unauthorised construction. In response thereto, the Corporation, after following due process of law, called upon the respondent to remove the unauthorised construction. That notice/order of the Corporation, is the challenge in the subject suit. The application moved by the petitioner for impleadment was rejected on the ground that, petitioner is neither proper, nor necessary party under Order 1 Rule 10 of the Civil Procedure Code.

3. Learned Counsel appearing for the appellant, submitted that, the Corporation initiated action against the respondent no.1 at the instance of the Society. It is submitted that the unauthorised construction is a continuous source of nuisance and causes obstruction to the members of the Society. It is argued that, although the suit was instituted in the year 2016, apparently, the Corporation is not keen to contest the suit. The petitioners are therefore

afraid that for want of serious contest to suit, decree may be passed in favour of the respondent. It is further submitted that, although the respondent has challenged the notice issued by the Corporation, however, the fact remains that the petitioner-Society has a direct and substantial interest in the building in which the respondent has carried out unauthorised construction and therefore the outcome of the suit would materially affect the right and interest of the petitioner. On the other hand, the learned Counsel for the respondent submitted that the petitioner is neither necessary, nor a proper party. He submitted, plaintiff is not claiming any relief against the petitioner and merely because Society has relevant evidence to offer on questions involved in the suit, it could not be joined as a defendant to the suit. Learned Counsel relied on the decision in the case of **Kasthuri V/S. Iyyamperumal and Others ((2005) 6 SCC 733.**

4. In the case of **M/s. Aliji Monoji & Co. V/s. Lalji Mavji, 1997 SCC 64**, the Hon'ble Supreme Court has held that, where the presence of respondent is necessary for complete and effectual adjudication of the dispute, though

no relief is sought, he is a proper party. Necessary party is one, without whose presence, no effective and complete adjudication of the dispute, would be made and no relief can be granted. In the cited ruling, the question was, whether the landlord was a necessary and proper party, to the suit for perpetual injunction against the Municipal Corporation for demolition of demise building. The question in the case at hand, is the same as was in the cited ruling. It was held that the landlord has a direct and substantial interest in the demise building before the demolition of which notice under Section 351 was issued. Thus held, in the event of its' demolition, his rights would be materially affected. In those circumstances, the landlord necessarily was held as a proper party, though the relief sought for against the Municipal Corporation was for perpetual injunction. In the case at hand, the petitioners are the purchasers of the flats sold to them by the respondent-Promoter-developer. The flat purchasers formed and registered Co-operative Housing Society. The respondent has challenged the registration of the Society. The fact remains, the alleged unauthorised construction made by the respondent in the building is

causing obstruction and is a continuous source of nuisance. In these circumstances, although the Society may not be a necessary party for complete and effectual adjudication of dispute, however, the decree in the suit, would certainly affect the interest of the petitioners and therefore the petitioner is a proper party, though no relief is sought in the suit against them. For all these reasons, the impugned order is quashed and set aside.

5. Rule is made absolute.
6. The application of the petitioner below Exhibit-36 in Regular Civil Suit No.309/2016 pending in the Court of Civil Judge Senior Division, Kalyan, is allowed.
7. The Writ Petition is disposed of.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2022.09.17
13:11:39 +0530

(SANDEEP K. SHINDE, J.)