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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8087 OF 2019**

Jay Anand Co-operative
Housing Society Limited

..... Petitioner.

V/s

A.H. Wadia Trust and Others

..... Respondents.

Mr. Shriram S. Redij for the Petitioner.

Mr. Maneesh Trivedi @ Sameer Singh i/b L.R. & Associates for
Respondent Nos. 1 to 5.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 18, 2022

P.C.:-

1] In T.E. & R. Suit No. 151/174 of 2014 initiated under Section 41 of the Presidency Small Causes Courts Act on the file of Small Causes Court at Bombay, Application-Exhibit-39 was taken out by Respondents/Plaintiffs under the provisions of Order 6 Rule 17 of the Civil Procedure Code, seeking impleadment/addition of Petitioner as Defendant No.4 to the suit. Such prayer is allowed vide order impugned dated 24/04/2019. As such, this Petition.

2] Counsel for the Petitioner while questioning the order impugned

would urge that Petitioner is neither necessary nor proper party to the proceedings, particularly in the absence of any privity of contract *inter se*. According to him, order of deemed conveyance granted in favour of the Petitioner under sub-section (3) of Section 11 of the MOFA is subject matter of challenge in independent proceedings at the behest of Respondents/Plaintiffs. In such an eventuality, said order cannot form to be the basis for seeking impleadment. He would further urge that right, if any, accrued in favour of the Plaintiffs is as against the other Defendants in whose favour lease was executed and the validity of deemed conveyance cannot be gone into in the present suit. That being so, he claimed that order impugned is not sustainable.

3] While supporting the aforesaid order, Counsel for Respondents would urge that ownership over the suit property can be inferred from rival pleadings of the parties. According to him, breach of conditions of lease has prompted Respondents to file suit. Since Petitioner is in possession of the suit property, it is necessary to implead them as party-defendant to the suit so as to make decree executable.

4] I have appreciated aforesaid submissions.

5] Suit is based on Lease Deed dated 07/01/1967 executed by Plaintiffs in favour of Defendant No.1. Defendant No.1, in turn, has executed development agreement and developer has transferred developed property in favour of members of the Petitioner-Society. Fact remains that suit for eviction is based on violation of terms of lease as narrated in para 2 of the Plaint.

6] Fact as regards execution of deemed conveyance under the provisions of MOFA in favour of the Petitioner is not in dispute as such order is passed by the competent authority at the behest of the Petitioner and is assailed by the Respondents/Plaintiffs before this Court in Writ Petition. Even if in the Application for amendment, Respondents/Plaintiffs have referred to the order of deemed conveyance, same is necessary to establish that, if not necessary, Petitioner is an appropriate party to the suit.

7] Small Causes Court while granting prayer of

Respondents/Plaintiffs was sensitive to the fact that Petitioner through its members are in possession of the suit property and to make decree executable, Petitioner-Society is a necessary party who is representing interest of its members.

8] That being so, no illegality could be noticed in the order impugned. No interference is therefore called for in the order impugned. Petition stands dismissed.

9] However, this will not preclude the Petitioner from raising appropriate defense before the Trial Court, which be decided in accordance with law without being influenced by the findings recorded hereinabove.

(NITIN W. SAMBRE, J.)