

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12190 OF 2022**

Kahini Developers Pvt. Ltd.Petitioners
V/s.
The State of Maharashtra & Ors.Respondents

Mr. Vineet Naik, Senior Advocate with Mr. Farhan D. and Mr. Vasim A. Shaikh i/by Mr. Pravin Mehta and Mithi and Co. Advocate for the Petitioners.
Smt.M.S.Srivastava, AGP for State.
Mr. Pratyush Ranjan with Mr. Yash Jain with Mr. Santosh Salekar i/by Halal and Co., Advocate for the Respondent No.3.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 18TH OCTOBER, 2022.
PRONOUNCED ON: 10TH NOVEMBER, 2022

P.C. :

1. This Petition under Article 227 of the Constitution of India takes exception to the order dated 5th August, 2022 by which the learned Judge, City Civil Court, Greater Bombay declined, leave to amend the plaint and impleadment of Ashoka Shopping Centre Premises Co-operative Society ('Society' for short) as the defendant no.3 in the Short Cause Suit No.9754 of 1982, as sought by the Petitioners-Plaintiffs in Chamber Summons No.1684 of 2017.

2. **Back-ground Facts:**

Petitioner/Plaintiff filed suit, for (i) declaration that Agreement of Lease dated 2nd October, 1975 and the Resolution dated 19th January, 1978 issued by the State of Maharashtra-Defendant No.1, are valid, subsisting and constitute a contract between the plaintiffs and defendant no.1 (State of Maharashtra); for (ii) its specific performance and for consequential and other reliefs including a prayer that the State of Maharashtra be directed to execute indenture of lease in favour of the plaintiff no.1 pursuant to terms and conditions contained in the Agreement of Lease dated 2nd October, 1975.

3. It appears, proposal for construction of hospital-cum-nursing home, residential building for staff and a shopping centre in the premises of G.T. hospital, Bombay through M/s. Puri Construction (Private) Limited was approved by the State of Maharashtra on 28th May, 1975. Accordingly, an agreement was entered into with M/s. Puri Constructions (Private) Limited on 2nd October, 1974 under which a piece of land admeasuring 4990 sq.mtrs. was given to M/s. Puri Construction (Private) Limited on

a lease of 98 years for construction of a shopping centre on the annual rent of Rs.10 Lakhs subject to terms and conditions. It appears, M/s. Puri Construction (Private) Limited, which were already operating from Delhi had informed the Government that they have opened a new wing of their company known as Puri Construction (Bombay) Private Limited, which will operate the contract in Bombay. This was done with a view to obtain better operation control for execution of contract. Proposal of M/s. Puri Construction (Private) Limited was considered by the State of Maharashtra and accordingly, vide G.R. dated 19th January, 1978 was pleased to direct;

(I) M/s. Puri Construction (Bombay) Private Limited should be recognised for the purpose of execution of the terms of agreement dated 2nd October, 1975 entered into with M/s. Puri Construction (Private) Limited;

(ii) A tripartite agreement between the three parties, namely the State Government, M/s. Puri Construction (Private) Limited and M/s. Puri Construction (Bombay) Private Limited should be drawn in consultation with Law & Judiciary Department.

4. The name of M/s. Puri Construction (Bombay) Private Limited/Plaintiff has been changed to that of M/s. Kahini Developers Private Limited (Plaintiffs) from **16th November, 2005** and fresh certificate of incorporation consequent on the change of name has been issued by the Registrar of Companies, Bombay pursuant to provisions of Section 23(1) of the Companies Act, 1956.

5. That pursuant to GR dated 19th January, 1978 and pursuant to extensive negotiations that were dealt between the parties and the order passed in the pending suit, tripartite agreement dated 9th October, 1985 was entered into and executed by the State of Maharashtra and M/s. Puri Construction Limited and the Petitioner (Plaintiff No.1) herein. Whereby parties had agreed that the Petitioner would carry out work contemplated under the Agreement of Lease dated 2nd October, 1975 that was originally entered into between the State of Maharashtra and M/s. Puri Construction (Private) Limited. As such, State of Maharashtra has formally recognised plaintiff no.1 as 'builder', for execution of the said project contemplated under the Agreement of Lease with effect from 19th January,

1978. Whereafter plaintiff no.1 constructed the building and pursuant to construction of the said building, the Municipal Corporation of Greater Mumbai granted occupation certificate by its letter dated 27th January, 1996. Plaintiffs' case is that on or about 24th March, 2000, vacant possession of newly constructed (New hospital-cum-nursing home building) comprising of basement plus ground plus ten upper floors including two service floors situated at Building No.B of GT Hospital, was taken over by the Executive Engineer of the State of Maharashtra. Thus, it is plaintiffs' case that they have complied with all their obligations under the Agreement of Lease as modified by the subsequent tripartite agreement and the supplemental agreement. Their further case is that they have constructed and fully completed Ashoka Shopping Centre Building as permitted in the said Agreement of Lease. Their further case is that they have also created third party rights and disposed of all tenements/shops/godowns/units situated therein and have accordingly entered into separate agreements in respect of each such tenement/shop/godown/unit with the concerned individuals, as required by law. It appears, individual shop purchasers in Ashoka Shopping Centre Building have

formed and registered Ashoka Shopping Centre Premises Co-operative Society Limited under the Maharashtra Co-operative Societies Act, 1960. It is the plaintiffs' case that though they have complied with all their obligations, defendant no.1 has not complied with its obligations mentioned in Agreement of Lease in-as-much as they have failed and/or neglected to execute an Indenture of Lease as modified by the subsequent Tripartite Agreement in favour of Petitioner as more particularly contained in the said Agreement of Lease and supplemental agreement despite several repeated requests and reminders. Plaintiffs' further grievance is that since the State of Maharashtra did not execute Indenture of Lease in their favour, in turn plaintiffs could not execute requisite title in favour of the Ashoka Shopping Centre Premises Co-operative Society, as a statutory obligation.

6. In the back-drop of the aforesaid facts, plaintiffs instituted subject suit seeking a decree to declare that the State of Maharashtra is bound and liable to execute Indenture of Lease in favour of the plaintiff no.1 pursuant to Agreement of Lease dated 2nd October, 1975 and for such other reliefs.

7. In consideration of the above facts, plaintiffs taken out chamber summons seeking to implead M/s. Ashoka Shopping Centre Premises Co-operative Society as defendant and consequential amendment including amendment to prayer clauses (B), (F) and (H)(iii). By this amendment, plaintiffs were seeking declaration that the State of Maharashtra is bound and liable to execute Indenture of Lease in favour of the plaintiffs and/or defendant no.3 (Proposed Defendant) i.e. Ashoka Shopping Centre Premises Co-operative Society Limited pursuant to said Agreement of Lease dated 2nd October, 1975. This amendment was sought in view of the fact that plaintiffs being, 'Builders'/ Promoters were under statutory/contractual obligations to execute requisite title in favour of Ashoka Shopping Centre Premises Co-operative Society. However, it could not be executed since the State of Maharashtra has not executed Indenture of Lease in favour of the plaintiff no.1 as modified by the subsequent tripartite agreement and supplemental agreement.

8. The learned trial Court rejected Chamber Summons on the ground that proposed defendant-Society is neither necessary nor proper party and further, no reliefs were sought against the said society. Feeling aggrieved by the order dated 5th August, 2022, plaintiffs have filed this Writ Petition.

9. Mr. Naik, the learned Senior Counsel appearing for the Petitioner, on instructions, does not press impleadment of society, as party defendant. Mr. Naik submits that it would suffice the purpose even if in prayer clauses (B), (F), (H)(iii) of the plaint after word "Plaintiff No.1", the words "Or their nominees" is permitted to be added.

10. In consideration of the facts stated above and since Mr. Naik, the learned Senior Counsel, does not press the impleadment of the Society as defendant no.3, in my view, the amendment sought in the prayer clauses, i.e., addition of the words "**Or their nominees**" after the words "**Plaintiff No.1**" in prayer clauses (B), (F) and H(iii) deserves to be allowed and granted. In fact, this amendment may benefit Ashoka Shopping Centre Premises Co-operative Society, which otherwise is

entitled to conveyance in their favour. Moreover, amendment sought, does not change form of the suit nor it would, amount to withdrawal of admission prejudicing rights of the defendants.

11. For the reasons stated above, Writ Petition is partly allowed. Thus, following order:

(i) Order refusing impleadment of M/s. Ashoka Shopping Centre Premises Co-operative Society as defendant no.3 is upheld, not on merits but for the reasons that petitioner/plaintiff no.1 does not press impleadment;

(ii) Plaintiffs are permitted to add words “**And or their nominees**” in;

(a) Line No.10 of prayer clause (B) of plaint after words “Plaintiff No.1”;

(b) Line No.6 of prayer clause (F) of the plaint after words “Plaintiff No.1”;

(c) Line No.4 of prayer clause H(iii) of the plaint after the words “Plaintiff No.1”;

(iii) Consequential amendment to be carried out in the suit and other proceedings in the suit within four weeks

from the date of the order uploading on the web-site of the High Court.

12. Petition is disposed of.

(SANDEEP K. SHINDE, J.)