

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 2977 OF 2022

Shlok Enterprises (Manhar) through its Partner & Kalpesh Himmatlal Jain	...	Petitioner
<i>Versus</i>		
Virendra K. Vora and Ors.	...	Respondents

Ms. Nilima V. Sanglikar for the Petitioner.
Mr. Amarendra Mishra for the Respondent 1.
Ms. Sumedha Rao i/by Rumana Bagdadi for the Respondent 2.
Mr. Santosh Parad for the Respondent 3 – MCGM.

CORAM: ROHIT B. DEO, J.
DATE : 19th JULY, 2022

JUDGMENT :-

- . Heard.
2. Rule. Rule is made returnable forthwith.
3. With consent, the petition is heard finally.
4. The petitioner is challenging the order dated 23rd November, 2021 rendered by the learned Judge, City Civil Court in L.C. Suit 453 of 2014 whereby Chamber Summons 572 of 2018 moved by the plaintiff is allowed and the petitioner is impleaded as defendant 3 in the suit.
5. The short submission of Ms. Nilima Sanglikar, learned counsel

for the defendant 3 is that the defendant 3 is neither necessary nor proper party to the suit. It is argued that the defendant 3 is the developer who has completed the entire project in terms of the agreement between the defendant 1 – society and the developer, to which agreement the plaintiff is not a party. The extension of the submission is that there is no privity of contract between the plaintiff and defendant 3.

6. The learned counsel for the plaintiff would submit in rebuttal that in the context of the prayers in the suit, the developer is a necessary party in as much as in its absence no effective order can be rendered in the suit in the event the plaintiff succeeds in establishing claim to Floor a Space Index (for short ‘FSI’) corresponding to land admeasuring 350 sq. ft., which claim is predicated on the basis of the agreements dated 1st August, 1999 and 17th July, 2000 between the plaintiff and the defendant 1 – society.

7. The learned Trial Judge has allowed the chamber summons reasoning that the amendment to the plaint and impleadment of defendant 3 is necessitated due to events which have occurred during the pendency of the suit. The learned Trial Judge holds that in the context of the suit claim, defendant 3 is a necessary party whose

presence would enable the Court to effectively and completely adjudicate upon all the questions involved in the suit.

8. L. C. Suit 453 of 2014 as originally filed sought a declaration that the plaintiff is a bonafide purchaser of the suit premises in view of the agreements dated 1st August, 1999 and 17th July, 2000 executed by the defendant 1 – society and is entitled to FSI/TDR corresponding to area admeasuring 350 sq. ft. The other declaration sought is that the partial demolition of the suit premises on 18th February, 2014 is bad in law and that the plaintiff is entitled to reconstruct or repair the demolished portion of the suit premises and the other prayers seek injunctive orders against the defendants 1 and 2 from dispossessing the plaintiff.

9. The substratum of the plaint as originally instituted is that the plaintiff is in possession of commercial shop premises admeasuring 350 sq. ft. in built-up area and is conducting business therein since 1999. The plaintiff claims to have purchased the suit premises from the original owner. The plaintiff then avers that in the extra ordinary general meeting dated 19th January, 1997, the Society resolved to sell the suit premises to Mrs. Heena Savla and to execute the necessary agreements and documents. An agreement was executed in March

1997 between the society and the Mrs. Heena Savla whereby the suit premises was sold on terms and conditions stipulated therein. Mrs. Heena Savla was put in possession and she regularly paid the maintenance charges of the society.

10. Plaintiff avers that Mrs. Heena Savla agreed to sell the suit premises to the plaintiff and the society issued no objection certificate for such transfer. Agreement of sale dated 15th July, 1999 was executed between Mrs. Heena Savla and the plaintiff. The plaintiff asserts that pursuant to the agreement of sale dated 15th July, 1999 he was put in possession of the suit premises and since then is conducting his business in the name “Hot Chips”. The plaintiff further avers that the society executed agreement in July 2000 confirming the rights of the plaintiff and accepted Rs.25,000/- (Rupees Twenty Five Thousand Only) from the plaintiff. The plaintiff avers that in June 2003, the defendant 1 – society called upon the plaintiff to produce certain documents in respect of the suit premises which the plaintiff duly submitted and no further action was initiated by the society.

11. The plaintiff states that notice dated 2nd January, 2014 is issued by the Corporation alleging that the suit premises is constructed illegally. The plaintiff replied and enclosed all relevant documents

establishing the legality of the suit structure. The Corporation however passed order dated 30th January, 2014 declaring that the suit premises is unauthorized and liable to be demolished. The plaintiff addressed letter dated 5th February, 2014 to the Corporation seeking regularization of the suit structure. The plaintiff then filed Suit 384 of 2014 challenging the action of the Corporation, in which suit the plaintiff was denied interim relief and on 18th February, 2014, the front portion of the suit premises was demolished by the Corporation in connivance with the society. It is broadly on the basis of such averments that the plaintiff claimed the relief noted supra.

12. Chamber summons 572 of 2018 is taken out by the plaintiff seeking amendment to the plaint and impleadment of defendant 3, in view of the subsequent events. The plaintiff contended that the defendant 1 – society had not disclosed that even prior to the institution of the suit defendant 1 – society had entered into development agreement dated 7th October, 2013 with defendant 3 builder whereunder the builder is to construct a new building comprising ground and seven upper floors to be known as “Manhar Residency” and that the defendant 2 – Corporation had issued IOD dated 9th July, 2015 and commencement certificate dated 21st March, 2017. The

plaintiff averred that the builder is constructing new building pursuant to the development agreement and permissions granted by the Corporation and that in the changed scenario, the plaintiff is entitled to a declaration that he is entitled to FSI corresponding to 350 sq. ft. area. The plaintiff averred that during the pendency of the suit, the building is completely demolished and therefore the builder is a necessary party in as much as rights of the plaintiff under the agreements executed in his favour by the defendant 1 – society are also enforceable against the builder.

13. The plaintiff sought permission to amend the plaint to incorporate the events which occurred during the pendency of the suit and amendment to the prayer clause to incorporate following prayers :-

“bb) That consequently, if this Hon’ble Court is inclined to grant prayer clause (b), the Defendant No.3 builder be directed to earmark a premises/flat admeasuring 350 square feet area in the proposed/new building i.e. ‘Manhar Residency’ constructed on the Suit Plot and handover the possession of the same to the Plaintiff.

ee) That pending the hearing and final disposal of the present Suit, this Hon’ble Court be pleased to direct the Defendant No.3 builder, to earmark a premises/flat admeasuring 350 square feet area in the proposed/new building i.e. ‘Manhar Residency’ constructed on the Suit Plot, in favour of the Plaintiff.”

14. The developer opposed the chamber summons by filing an affidavit in reply, the gist of which is that there is no privity of contract

between the plaintiff and the developer. The developer contended that the society represented that there are 17 members who are allotted 15 residential flats and 2 shops, that the list of members did not include the plaintiff and it was on the basis of such representation that the developer responded to the tender and having emerged as the successful bidder, started the construction. The developer has filed an additional affidavit in the instant petition, stating that all the obligations under the development agreement dated 7th October, 2013 between the developer and the society are complied with and that agreements have also been executed in favour of the members of the society as per the list provided by the society. It is further stated in the additional affidavit that the developer handed over possession to the members of the society between August 2021 and October 2021. It is further averred that the developer has also sold the flats which under the development agreement it was allowed to sell in open market. It is on such premise that the developer asserted in the additional affidavit that it is neither necessary nor proper party, that the proposed amendment will completely change the nature of the suit and if the amendment is allowed the suit claim will be beyond the pecuniary jurisdiction of the City Civil Court.

15. In my considered view, there is no error whatsoever in the view taken by the learned Trial Court that the developer is a necessary party to the suit. I note from the narratives on record, that the agreement of development is not a contract simpliciter for construction of the building on behalf of the society. The agreement of development is in essence an agreement of sale. The developer is permitted to sell apartments in the open market at a price determined by the developer. In consideration, the developer has agreed to construct and allot new apartments to the members of the society. In this view of the matter, if the plaintiff succeeds in the suit and is held entitled to FSI corresponding to area admeasuring 350 sq. ft., the decree may be rendered ineffective in the absence of the developer. The events have occurred during the pendency of the suit. *Prima-facie*, the objections that the structure of the suit is changed or that the amended prayer clause relief is beyond limitation, cannot be countenanced. At the stage of considering an application under Order VI Rule 17 read with Order 1 Rule 10, it is wholly unnecessary to consider the merit of the proposed amendment, which shall undoubtedly be looked into by the Trial Court at an appropriate stage. I am satisfied, that the developer is a necessary party to the suit and in

any event is a proper party.

16. I see no infirmity in the order impugned as would warrant interference any writ jurisdiction.

17. Petition is dismissed.

18. No order as to costs.

BIPIN
DHARMENDER
PRITHIANI

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[ROHIT B. DEO, J.]