

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3308 OF 2023

Aditya Ravi Chanrai

...Petitioner

Versus

Salil Rameshchandra Kinkabwala and Others

..Respondents

Ms. Reshma Ravi i/b. K. P. Ravi and Company for the Petitioner.

Mr. G. S. Godbole, Senior Advocate a/w Mr. Simil Purohit i/b. Mr. Mehul A. Shah for Respondent Nos.1 and 2.

Coram : Sharmila U. Deshmukh, J.

Date : 18th July , 2023.

P. C. :

1. By this Petition, the Petitioner seeks to challenge the order dated 21st January, 2023 permitting the Respondent Nos.1 and 2's impleadment in the proceedings being L.C. Suit No.1713 of 2018. For the sake of convenience the parties are referred to by their status before the trial Court.

2. L.C. Suit No.1713 of 2018 was preferred by the Plaintiff challenging the notice issued by the Defendant-Municipal Corporation under Section 351 and 488 of the Mumbai Municipal Corporation Act, 1888 ("MMC Act"). The case of the Plaintiff is that his father is the monthly contractual tenant of premises being flat No.5 situated at

Swastik Court, Churchgate, Mumbai and the landlords of the suit flat are one Deval Vinay Saraiya and Smt. Manorama J. Saraiya. It is the case of the Plaintiff that before his father became the tenant of the suit flat in the year 2015, his late great grandmother was the original tenant and after her demise his grandmother became the legal tenant pursuant to the decree of the Small Causes Court in the R.A.E. Suit. It is further the Plaintiff's case that after her demise his father along with his family which includes the Plaintiff is occupying the premises and paying rent. The Plaintiff claims that the suit flat was in state of bad repairs as no repairs has been carried out by the landlord inspite of repeated requests and that in the month of November and December 2017 architects were appointed to carry out urgent repairs. It is stated that the Plaintiff's father had communicated to both the landlords as well as the Bombay Municipal Corporation listing out the items of repairs proposed to be carried out. The cause of action is stated to be a notice received in the month of May 2018 under Section 351 of the MMC Act to which a reply was given on November 2018. The case of the Plaintiff is that the Defendant-Municipal Corporation did not consider the said reply and without reference to the same issued notice to the Plaintiff under Section 488 of the MMC Act. Both these notices have been challenged before the City Civil Court.

3. In these proceedings an application came to be filed by the Respondent Nos.1 and 2 herein under Order I Rule 10(2) of the Code of Civil Procedure (for short, "CPC"). The application contends that the Applicants are the co-landlords of the suit property alongwith Mrs. Manorama J. Saraiya pursuant to the Will of Deval Vinay Saraiya who was the co-landlord. The application claims that the probate has been granted on 4th October, 2014. The application further states that there are suits which are pending against the father of the Plaintiff in the Court of Small Causes Court being R.A.E. Suit No.546 of 2018 seeking a decree of eviction in which an order of status quo was passed on 29th May, 2018 and that in breach of the said order of status quo the illegal work has been continued in the suit flat. Paragraph 5 of the Application sets out the grounds on which the impleadment is sought. One of the grounds is that the Applicants are the co-landlords of the building in which the suit flat is situated and in which there is a prior litigation being Suit No.841 of 2018 filed by the father of the Plaintiff against the Applicant No.1 seeking permanent injunction and also that R.A.E. Suit No.546 of 2018 is filed by the Applicant against the father of the Plaintiff. An objection is also taken on the ground that the Plaintiff is not the tenant of the premises and as such has no locus to file the suit. The other ground is that under the guise of tenantable repairs, the Plaintiff's father has illegally carried out

structural changes in the existing structure of the suit flat. After hearing the parties, the City Civil Court allowed the application permitting the Applicants to be joined as party to the proceedings giving rise to the present Petition.

4. Heard Ms. Reshma Ravi, learned counsel for the Petitioner and Mr. G. S. Godbole, learned Senior Advocate for Respondent Nos.1 and 2.

5. Ms. Reshma Ravi, learned counsel for the Petitioner submits that the suit was filed challenging the notice issued under Section 351 of the MMC Act and as such only the validity of the notice will be an issue. She would further contend that the Applicant became the co-landlord in the year 2015 by way of succession and as such is not in possession of the sanctioned plans of the building so as to assist the Court in deciding the issue of structural additions or alterations. She would further submit that the notice has been issued by the Corporation at the instance of the Applicants who seeks to evict the Plaintiff from the suit flat. She would further contend that the ground on which the trial Court has permitted the impleadment is that the landlord must be in a position to clarify whether notice structure is legally made or not and that he ought to be in custody of all material

documents. She would urge that based on an assumption that the landlord is in custody of material documents the impleadment is allowed. In support of her submissions she relied upon the following decisions :-

- (1) *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay & Ors.*¹**
- (2) *Shriman Kishor son of Chandrakant Urane Vs. City of Nagpur Corporation and Others.*²**
- (3) *Santosh S/o Hanumant Salunkhe Vs. The Municipal Commissioner, Ahmednager Municipal Corporation and Another.*³**
- (4) *Deju Somaya Salian Vs. The Municipal Corporation of Gr. Mumbai & Ors.*⁴**
- (5) *Mrs. Sulbha Devendra Kokate Vs. Mrs. Surekha Kokate & Ors.*⁵**
- (6) *Mr. Ashok Bansidhar Agarwal Vs. The State of Maharashtra and Others*⁶**

6. *Per contra*, Mr. Godbole, learned Senior Advocate appearing for the Applicants points out that R.A.E. Suit No.546 of 2018 has been instituted by the Applicants seeking eviction of the father of the Plaintiff under Section 16(1)(b) of the Maharashtra Rent Control Act. He would further point out that the eviction is sought on the ground of bonafide requirement, arrears of rent and also for carrying out structural additions or alterations. He would further point out that the Plaintiff has no locus to file the suit or even these proceedings as the

1 2017(6) All M.R. 420 (SC)

2 Writ Petition No.937 of 2017 (Nagpur Bench) decided on 4th April, 2018.

3 Writ Petition No.3398 of 2018 (Aurangabad Bench) decided on 4th May, 2018.

4 Writ Petition No.7123 of 2018 decided on 24th September, 2018.

5 Writ Petition No.1587 of 2020 decided on 30th March, 2021.

6 Writ Petition No.6563 of 2017 decided on 22nd July, 2019.

Plaintiff's father is the tenant of the premises and not the Plaintiff. He has invited the attention of this Court to the notice dated 4th July, 2018 which is the subject matter of the proceedings before the Civil Court and would submit that the same shows unauthorised removal of brick walls from portions of the suit flat, altering the entrances to various rooms by unauthorised removal of brick walls and construction of brick walls leading to partition of rooms etc. He would further submit that any order passed in these proceedings will affect his right, title and interest in the suit property. He would further contend that the Plaintiff was aware that the notice has been issued at the instance of the Applicant. In support of his submissions he relied upon the following decisions :-

- (1) *Aliji Momonji and Company vs. Lalji Mavji and others*⁷**
- (2) *Adam A. Sorathia & another Vs. Municipal Corporation of Greater Bombay & another*⁸**
- (3) *Chandrakant Dharma Bhonu Vs. Pandurang Ramchandra Dandekar and another*⁹**
- (4) *Milind Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai & another*¹⁰**
- (5) *Mr. Ranjitsingh Linga & Anr. Vs. The Municipal Corporation of Greater Mumbai & Anr.*¹¹**
- (6) *Shri Arun Morarji Ruparel and Another Vs. The Assistant Municipal Commissioner and Another*¹²**
- (7) *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and Ors.*¹³**
- (8) *Mohamed Hussain Gulam Ali Shariffi* (supra)**

7 (1996) 5 SCC 379

8 2002(4) Bom. C.R. 419

9 2004(2) Mh.L.J. 782

10 2006(2) Bom.C.R. 617

11 Writ Petition No.8429 of 2009 decided on 8th February, 2010.

12 Writ Petition No.6206 of 2014 decided on 18th February, 2015.

13 Writ Petition No.11707 of 2014 decided on 16th November, 2016.

(9) Maroti Parbhatrao and others Vs. Muktabai w/o Marotrao and others¹⁴

(10) Ram Rudra Co-op. Hou. Soc. Ltd. Thr. Chairman Jitendra Vasudev Barhate Vs. Mira Bhayander Municipal Corporation Thr. Commissioner And Ors.¹⁵

7. In rejoinder Ms. Reshma Ravi would urge that the eviction proceedings will not be affected as there are other grounds on which the eviction is sought. She would further contend that various decisions of this Court have taken a consistent view in the proceedings seeking to challenge the notice under Section 351 of the MMC Act, it is only the validity of the notice which would be in question.

8. Before advertng to the facts of the case it would be beneficial to reproduce the provisions of Rule 10(2) of Order I of CPC which reads thus :-

“10(2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

14 2020(1) Mh.L.J. 199

15 Writ Petition No.8691 of 2022 decided on 3rd March, 2023.

9. A plain reading of the above provision indicates that the Court may at any stage of the proceedings strike out or add parties who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. It is well settled by catena of decisions that a necessary party is one without whom no order can be made effectively and proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

10. It will be beneficial to refer to some of the decisions of the Apex Court dealing with similar issues. The Apex Court in the case of ***Ramesh Hirachand Kundanmal vs Municipal Corporation of Greater Bombay and Ors.***¹⁶ was considering the issue of impleadment of the lessee of the land on which the service station was erected and in possession of the appellant. The action in that case was challenge to the notice issued by the Corporation for demolition of unauthorised two chattels on the terrace. The Apex Court after analysing the provisions of Order I Rule 10(2) of CPC held in paragraph 14 as under:

“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally

¹⁶ (1992) 2 SCC 524

*have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England*, that their true test lies not so much in an analysis of what are the constituents of the Applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated :*

"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'"

18. *The courts below have assumed that the subject matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are moveables on wheels and plates where servicing page and/or repairs are done and used for storing implements of the*

mechanics. Respondent 2 has no interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The courts below, therefore, failed to note that the Respondent 2 has no direct interest in the subject matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases."

11. In the case of ***Aliji Momonji and Company*** (supra) notice was issued under Section 351 of the Municipal Corporation Act for demolition of portion of building on the ground that the appellant had made unauthorized structures, the appellant being the lessee of the plot. The landlord in that case sought to be impleaded as a party claiming to have direct interest in the property which was ordered by the trial Court and upheld by the High Court. The Apex Court while considering the issue as to whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of the demised building held that the landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued as in the event of demolition his right, title and interest in the property demised to the tenant or licensee would be in jeopardy.

While considering the said issue the Apex Court took into consideration the decision in the case of **Ramesh Hiranand Kundanmal** (supra). The Apex Court in the facts of that case held that the landlord would be a proper party though no relief has been sought for against the landlord for the reason that in event the building is being demolished the right, title and interest of the landlord would be directly affected. In the present case there is no dispute about ownership of the notice structure or that the notice structure was demised to the tenant by the owner-landlord.

12. The Apex Court in the case of **Mohamed Hussain Gulam Ali Shariffi** (supra) was considering a challenge to a notice under Section 351 in respect of unauthorized construction in the building in question wherein the Respondent Nos.2 and 3 sought to be impleaded on the ground that the Respondent Nos.2 and 3 have the interest in the suit house inasmuch as the Respondent Nos 2 and 3 claimed to have an interest in the suit house by ownership, in respect of which civil suit seeking specific performance of agreement was pending. In that case the Apex Court noted the settled principle of law that the plaintiffs being a *dominus litis* cannot be forced to add any person as party to his suit unless it is held that the party is a necessary party. The Apex Court in the facts of that case held that the presence

of the Respondent Nos.2 and 3 was not required for deciding the legality of notice impugned in the suit and in the suit in question, the Court was not called upon to adjudicate the rights between the appellant and Respondent No.2 and 3 in relation to the suit house. In paragraph 17, the Apex Court held that merely because the suit house is the subject matter between the parties is no ground to get the dispute arising between the parties settled in one suit regardless of nature of cause of action on which the suit is founded.

13. Now I shall come to the decisions of this Court which has been relied upon by learned counsel appearing for the Plaintiff. The first decision is in the case of ***Shriman Kishor son of Chandrakant Urane*** (supra). In that case the notice in question was issued under Section 264 of the MMC Act which merely informed the Plaintiff that the property in question was in dilapidated condition and the same was likely to fall at any point of time. The facts of that case are clearly distinguishable as the notice was only an intimation to the Plaintiff to vacate and the rights of the owner was not directly affected by the issuance of the notice.

14. As regards the decision in the case of ***Santosh S/o Hanumant Salunkhe*** (supra) the case of the Petitioner therein was that he was

the owner of the premises and had approached the officer of Municipal Corporation for the purpose of carrying out repairs. The Respondent No.2 sought impleadment on the ground that the action was initiated against the Petitioner therein on the basis of the complaint lodged by the Respondent No.2. Considering that the Petitioner therein had purchased the premises from its Vendor and the Respondent No.2, who was merely a complainant, had vested interest as the Respondent No.2 was interested to purchase the shop premises, this Court declined the impleadment of the Respondent No.2. The facts of that case are clearly distinguishable and as such the decision is clearly inapplicable in the present case.

15. As regards the decision in the case of ***Deju Somaya Salian*** (supra) this Court noted that the Respondent No.3 therein had already filed a separate suit for seeking partition of the property including the suit property and set aside the order impleading the Respondent No.3 who was the co-owner. In that case the Respondent No.3 sought impleadment without making out any case as to how the rights of the Respondent No.3 would be materially affected.

16. The next decision is the case of ***Mrs. Sulbha Devendra Kokate*** (supra). In that case the Petitioner was the co-owner of the

property and the notice in question came to be issued at the instance of the Petitioner therein. In that case the impleadment was sought on the ground that he has an interest in the suit property and the demolition notice was issued at his instance without further stating as to how his rights would be materially affected by the outcome of the proceedings.

17. Insofar as the decision in the case of **Mr. Ashok Bansidhar Agarwal** (supra) is concerned the facts are clearly distinguishable in as much as the encroachers therein had erected unauthorised construction on the road leading to the premises and in the facts of that case considering that Petitioner was not the owner of the property and only interested in the outcome of the proceedings in that if the action under the MMC Act is upheld they will have the benefit of access to the building, this Court held that outcome does not make them either necessary or proper party to the proceedings. In my opinion, the decisions which have been relied upon by the learned counsel for the Petitioner does not assist the case of the Petitioner.

18. Considering the above decisions of the Apex Court in my view the person seeking impleadment must have direct and substantial interest in the property forming subject matter of the proceedings and his rights must be affected by the outcome of these proceedings.

In the facts of the present case the notice which has been issued by the Corporation states that there has been unauthorised removal of brick walls as well as construction of brick walls leading to a change in the layout of the flat. The notice further states that the removal of the brick walls is not tenantable repairs and as such has declared the notice work as unauthorised and to be demolished. The order passed is a direction to remove/demolish notice work failing which the same will be removed/demolished by the Corporation. The admitted position is that the Applicants are the co-landlords of the premises in question. It may be that they have become the co-landlords in the year 2015 but that does not divert from the fact that the Applicants have direct and substantial interest in the suit property. By the notice issued under Section 351 of the MMC Act the Corporation has declared the notice work as unauthorised and seeks to demolish the same. In such circumstances if the demolition is carried out the rights of the Applicants in the suit property will be substantially affected. Conversely, if the Plaintiff succeeds in the proceedings and the structural additions and alterations which is stated to have been carried out are held to be the tenantable repairs, the Applicants will be directly affected by the outcome of this proceeding as the same will affect the eviction suit which has been filed by the Applicants in which one of the grounds taken is the carrying out of

structural additions/alterations in the suit property. Either which way the outcome of the proceedings will materially affect the rights of the Applicants in the suit property. Considering the facts of the present case, in my view, the decision of the Apex Court in the case of ***Aliji Momonji and Company*** (supra) is squarely applicable to the present case and the Applicants are required to be impleaded as party to the proceedings.

19. In light of the above discussion and considering that the jurisdiction of this Court under Article 227 of the Constitution of India has been invoked, in my opinion, there is no warrant for interference with the impugned order.

20. The Writ Petition stands dismissed.

21. At this stage a request is made for stay of this order for a period of two weeks. The order is stayed for a period of two weeks from the date of uploading of this order.

[Sharmila U. Deshmukh, J.]