

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6970 OF 2023

Tarun Mahendra Patel & Anr.

...Petitioners.

Versus

Amool Shivaji Rokade & Ors.

..Respondents.

*Mr. Mayur Khandeparkar i/b Mr. Mehul A. Shah for the petitioner.
Ms. Shail Pathak and Ms. Aarti R. Dharamsy for respondent No.1.
Mr. R.Y. Sirskar for respondent No.2&3.
Ms. Manisha Jagtap for respondent No.4-MHADA.
Ms. Zenobia Irani for respondent No.6.*

Coram : Sharmila U. Deshmukh, J.

Date : June 21, 2023.

P. C. :

1. The petitioner questions the order dated 26th April 2023 passed by the City Civil Court, Mumbai permitting the impleadment of respondent No.6 – landlord in the proceedings bearing Suit No.786 of 2023 instituted by the petitioner.

2. The factual matrix is as under :

[a] The petitioner claims to be the occupant of the premises and carrying on business in the name and style of “Bharat Green Lodging House” situated at Dnyandeshwar Mandir Road, Dadar (West), Mumbai. The case of the petitioner in the suit is that they are in

physical possession, use and occupation of the suit premises and claim on their own right as well as under the Will of one Andiben, who was original tenant of the premises.

[b] It is the case of the petitioner that there is redevelopment of building known as "Tukaram Smruti" which is abutting and adjoining to the building which the petitioner claims to be in occupation. As per the plaint, the cause of action arose upon the receipt of notice dated 6th April 2022 addressed to the petitioner by respondent No.1 stating that Tukaram Smruti building is being notified as Category-1 building and that the question of not disturbing the possession of the plaintiffs does not arise. It appears that the said communication was pursuant to a notice dated 26th March 2022 addressed by the petitioner calling upon respondent No.1 not to enter into or disturb the peaceful possession of the petitioner carrying on business in the said premises.

[c] Based on the apprehension of disturbance of possession by respondent No.1, Suit No.786 of 2023 came to be filed. In the said suit, original landlord filed an application for being impleaded as party, which application came to be resisted by the petitioner. By the impugned order, the impleadment is permitted by the City Civil Court,

Mumbai and, as such, the present writ petition.

3. Heard Mr. Mayur Khandeparkar, learned counsel for the petitioner, Ms. Shail Pathak, learned counsel for respondent No.1, Mr. R.Y. Sirskar, learned counsel appearing for respondent No. 2 & 3. Ms. Manisha Jagtap, learned counsel appearing for respondent No.4 and Ms. Zenobia Irani, learned counsel appearing for respondent No.6.

4. Learned counsel for the petitioners submits that the petitioners are owners of the structure which is adjoining to Tukaram Smruti building which is undergoing redevelopment and is subject matter of notice issued under section 354 of the Mumbai Municipal Corporation Act, 1888. He would further submit that there is no such notice issued in respect of the present premises, i.e., Bharat Green Lodging House. He further points out the prayers in the suit and submits that the relief sought is restraining the respondent No.1-developer from disturbing the petitioner's possession over the suit premises and, as such, respondent No.6 is neither a necessary party nor a proper party. He would urge that it is undisputed that the petitioners are in possession of the premises and there are separate proceedings pending before the Small Causes Court, Mumbai for eviction filed by respondent No.6-landlord and, as such, it is not

necessary to implead respondent No.6–landlord in the present suit. He further points out the restraining orders which have been passed in the said suit against respondent No.1–developer.

5. To counter the submissions on the issue of being a necessary party to the suit, learned counsel for respondent No.6 submits that respondent No.6 does not recognize the petitioner as tenant and, as such, a suit for eviction is pending before the Small Causes Court, Mumbai. She has pointed out that apart from the relief of permanent injunction, the petitioners are also seeking a direction to defendant no.1 to enter into an agreement for permanent alternate accommodation with the petitioner in lieu of Bharat Green House Lodging and, as such, the landlord's right in the said property is directly affected. She urges that the same being the position, respondent No.6-landlord is a necessary party. She has further pointed out that the entire effort of instituting the suit is to stall the redevelopment process, which is proposed to be carried out by virtue of the MoU which has been executed between respondent No.1 and respondent No.6. She would point that it is her case that the petitioner is illegal occupant, inducted by original tenant–Andiben and by the present suit, the petitioner seeks to establish a right in respect of the suit premises.

6. Considered the rival submissions of the parties.

7. The suit has been instituted by the petitioner seeking an order of permanent injunction from disturbing the petitioner's peaceful possession over the suit premises. The cause of action, as is apparent from the pleadings, is a development agreement which is executed between respondent No.1 and respondent No.6 which would have the effect of interfering with the possession of petitioners.

8. In a suit for an order of permanent injunction, ordinarily, as the relief is sought only in respect of interference with plaintiff's possession, there is no necessity of impleading any third party as the only issue which will be considered is - as to whether the possession of plaintiff is being interfered with. However, in the present case, it is apparent that suit is based on the apprehension that possession would be disturbed pursuant to a MoU for redevelopment which has been executed between respondent No.1 and respondent No.6. Pertinently, the prayer clause (b) in the Suit No.786 of 2023 seeks a direction to defendant no.1-developer to enter into an agreement for permanent alternate accommodation with the petitioners in lieu of Bharat Green House Lodging. It is undisputed position that there is a

eviction suit pending adjudication which has been filed by the landlord. In such an event, if there is any adjudication as to the right of the petitioners in the premises to entitle them to an agreement for permanent alternate accommodation, the rights of respondent No.6– landlord will be directly affected. It is well settled that the application for impleadment has to be decided on the touchstone of Order-I Rule-10 of CPC and only a necessary or a proper party is required to be impleaded. The necessary party is one whose presence is necessary to effectively adjudicate the controversy in issue and a proper party is one whose presence is required for effective adjudication and in whose absence, the issue cannot be effectively adjudicated. The Apex Court in ***M/S. Aliji Momonji & Co v. Lalji Mavji [1996 SCALE (5)485]*** has held that the test is whether the person seeking to be impleaded as a party in a suit has a direct and substantial interest in the subject matter of suit. In the present case, considering that the suit for eviction filed by respondent No.6 is pending and the orders which are being passed in the present suit will directly affect the right of the landlord and will also affect the outcome of the eviction suit, in my opinion, the impugned order permitting respondent No.6 to be impleaded as party in Suit No. 786 of 2023 cannot be faulted with.

9. In view of the above, there is no merit in the writ petition.
Writ petition stands dismissed.

[Sharmila U. Deshmukh, J.]