



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9158 OF 2017

Atul Ramrao Kothare

...Petitioner

Versus

Laila Kabir Fernandes & Ors.

...Respondents

Mr. Eventa A. Gonsalves a/w Mr. Reyden L. Gonsalves for the
Petitioner.

Mr. Prakash G. Lad a/w Ms. Aparna Kalathil, Ms. Sayli Apte & Ms.
Shreya Shah for Respondent No. 4.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : OCTOBER 30, 2023

P. C. :

1. Heard.
2. The challenge in the Petition is to the order dated 11th July, 2017 allowing the application of the Respondent No. 4-Mumbai Labour Union to be impleaded as party to the eviction suit filed by the Petitioner against the Respondent Nos.1 to 3.
3. Learned counsel for the Petitioner submits that, the suit being one for eviction, the Respondent No. 4 was not a necessary or proper party. She would further submit that, the premises were let out to the Respondent Nos.1 and 2 who had unlawfully sub-let the same to the

Respondent No. 3 in his individual capacity. She would submit that, the Respondent No. 3 was carrying out various union activities from the said premises and there is no material to infer that Respondent No. 4-Mumbai Labour Union was the only Union whose activities, the Respondent No. 3 was conducting from the said premises. She points out the written statements of the Respondent Nos. 1 to 3 and would submit that, merely because for some time, the rent was paid from the account of Mumbai Labour Union cannot be a reason to infer that, the Mumbai Labour Union had any right in the said premises.

4. *Per contra*, Mr. Lad, learned counsel for the Respondents points out the cross-examination of the Petitioner in which the Petitioner has admitted that, the rent was received in cheque from Mumbai Labour Union. Drawing support from the said admission, Mr. Lad would contend that, Respondent No. 4 would fall squarely within the definition of tenant under the provisions of the Maharashtra Rent Control Act as the rent was being paid by Respondent No. 4 and as such, he is required to be impleaded in the eviction proceedings.

5. Considered the submissions and perused the record with the assistance of learned counsel for the parties.

6. The Petition filed under Article 227 of the Constitution of India seeks to challenge an order of impleadment of the Respondent No. 4 as

party to the proceedings. The grounds pressed in support of impleadment proceeds on the basis that, the rent was paid by the Mumbai Labour Union by cheque which has been accepted by the Petitioner and that the written statement of Respondent No. 3 states that, the Union is the tenant of the premises and the rent receipt was issued in the name of Respondent Nos. 1 and 2 who are the office bearers of the Applicant's trade union and that the same was never used for personal purpose. On the basis of these pleadings, the Respondent No. 4 sought impleadment as the Respondent No. 4 who was representing the Union of his capacity as an office bearer had expired on 1st September, 2016.

7. The application has to be tested on the touchstone of Order 1 Rule 10 of CPC. It is settled position that, a person who has a direct and substantial interest in the subject matter and is bound by the outcome of the proceedings is required to be impleaded in the proceedings.

8. The admitted position is that, the premises were let-out to Respondent Nos. 1 and 2 and the written statement of Respondent Nos. 1 and 2 asserts that, the Respondent No. 3 is the office bearer of Mumbai Labour Union and has no right, title and interest in the said premises. To the same effect is the written statement of Respondent No. 3, wherein, it is stated in paragraph No.13 that, the Respondent No. 3 is representing the trade union and he is using the office in the capacity of the

representative of the trade union. The material on record does indicate that, the suit premises were being utilized by the Mumbai Labour Union and the Union was being represented in these proceedings by the Respondent No.3 as office bearer of the Mumbai Labour Union. As regards the objection that, the Respondent No.3 was a union activist and was associated with various other unions, who may also stake a claim in the tenancy right, it needs to be noted that, in the cross-examination, it has been admitted by the Petitioner that, the rent was paid by cheque by the Mumbai Labour Union to which, there was no objection by the Petitioner. In that view of the matter, the apprehension of some other Union staking claim to the subject premises is unfounded.

9. Considering the material which has come on record, it cannot be stated that, the Mumbai Labour Union has no interest in the suit premises. The Trial Court while allowing the Application has observed that, the same would amount to violation of natural justice. It needs to be noted that, while deciding the application for impleadment, the pleadings of the parties were taken into account by the Trial Court and also the fact that the rent was being paid from the account of the Mumbai Labour Union as such, it cannot be said that, the sole reason for allowing the application was “violation of natural justice”.

10. In exercise of the powers under Section 227 of the Constitution of

India, I am not inclined to interfere with the order of impleadment especially in view of Section 105 of the CPC which permits any error in the order or proceedings to be taken as a ground of appeal in event the Petitioner does not succeed in the proceedings.

11. For the forgoing reasons, the Petition is dismissed.

12. Needless to clarify that, this observations are only for the purpose of deciding the validity of the impleadment application and the Trial Court to decide the suit on its own merits and uninfluenced by the observations made herein.

(SHARMILA U. DESHMUKH, J.)