

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10146 OF 2018

Abdul Hameed Khan Matwan

.. Petitioner

Versus

Shabbir Ahmad S. Khan

.. Respondent

-
- Mr. Sagar A. Joshi for Petitioner
 - Mr. K.P. Shetye for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2023

P.C.:

1. Heard Mr. Joshi, learned Advocate for Petitioner and Mr. Shetye, learned Advocate for Respondent.

2. Perused the impugned order which is a handwritten order on page No. 47 of the Writ Petition which appears in *Doctor's English handwriting*. This Court is unable to read and understand the text of the order.

3. Mr. Joshi, learned Advocate for Petitioner (original Defendant) has made an effort to recreate and reproduce the transcript of the order in a typewritten form on page No. 47A. On perusing the typewritten form of the order, it appears that the Application filed by the Plaintiff under Order I, Rule 10 of C.P.C. seeking impleadment of Thane Municipal Corporation as a proper and necessary party to R.C.S. No. 517 of 2015 has been allowed in the

interest of justice and the Plaintiff has been allowed to amend the plaint. Mr. Shetye, learned Advocate for Respondent also confirms that the impugned order dated 05.06.2018 reads so.

4. Perusal of the Application filed by the Plaintiff before the learned Trial Court would reveal that the Suit has been filed for specific performance of the agreement between the parties and injunction in respect of the suit property. The impleadment of Thane Municipal Corporation has been sought in view of the notice received from the Corporation by the Plaintiff in respect of unauthorized and illegal construction on the suit property. Record indicates that in respect of the said notice, a substantive suit is filed separately by the Plaintiff being R.C.S. No. 611 of 2016 before the Civil Judge Senior Division, Thane wherein Application below Exh. 5 is rejected and challenge to the Exh. 5 order also stands rejected.

5. On reading of the Application, I find no reason to assume nexus of the Thane Municipal Corporation to the reliefs prayed for in R.C.S. No. 517 of 2015. The impleadment order in fact does not give any reasons whatsoever save and except to state that impleadment of the Corporation would be necessary in the interest of justice. I am not inclined to accept this finding returned by the learned Trial Court in the impugned order.

6. Mr. Shetye would submit that in the meanwhile, trial Court proceeded further with the trial by impleading Thane Municipal Corporation as party. Thane Municipal Corporation filed its written statement and participated in the trial. Be that as it may, considering the principle relief prayed for in R.C.S. No. 517 of 2015, impleadment of Thane Municipal Corporation as a proper and necessary party cannot be allowed in the facts of the present case. However, if the Plaintiff desires to refer to and rely upon any of the documents, certified copies or public documents in his favour which are produced by the Corporation, it shall be open for the Plaintiff to rely upon the same strictly in accordance with the provisions of the Indian Evidence Act and in accordance with law by taking out appropriate proceedings.

7. With the above direction, impleadment of Thane Municipal Corporation as a proper and necessary party stands rejected. Writ Petition is allowed in terms of prayer clause (a). Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2023.03.02
14:28:54
+0530