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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2272 OF 2023

M/s. Kewal Kiran Clothing Ltd.

.. Petitioner

Versus

Jagannath Kedarnath Gupta and Anr.

.. Respondents

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- Mr. G.S. Godbole, Senior Advocate i/by Mr. Nikhil S. Rajeshirke and Ms. Bhagyashree Dhamapurkar, Advocates for Petitioner.
 - Mr. R.R. Tiwari, Advocate for Respondent No.1.
 - Mr. R.Y. Sirsikar, Advocate for Respondent No.2 – MCGM.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2023.

P.C.:

1. Heard Mr. Godbole, learned Senior Advocate for the Petitioner; Mr. Tiwari, learned Advocate for Respondent No.1 and Mr. Sirsikar, learned Advocate for the Corporation.

2. Perused the impugned order dated 18.11.2022 passed in Chamber Summons No.934 of 2018 by the learned City Civil Court, Borivali Division, Dindoshi, Mumbai. The impugned order rejects the Application filed by the Petitioner seeking impleadment in L.C. Suit No.1472 of 2017.

3. At the outset, Mr. Godbole would submit that Respondent No.1 had filed an earlier suit challenging six notices issued by the Municipal Corporation in respect of the same subject property. That

admittedly Petitioner is owner of the suit land and the structure of the Respondent No.1 standing on the said land was demolished pursuant to the impugned notices. In the suit filed before the Trial Court, Respondent No.1 now seeks reconstruction of the demolished structure.

3.1. In this regard, Mr. Godbole has drawn my attention to paragraph Nos.44 and 52 of the suit plaint which read thus:-

“44. In alternate to prayer clause (b), that this hon’ble court by decree and order, it may be directed to the defendants to permit the plaintiff to restore, reconstruct, re-erect the suit premises as set out in the above / prayer clause (a) above in the same and similar position as it was on 16.01.2017 at the cost of the plaintiff in respect of the suit premises viz. Kedarnath Gupta Chawl, IB Patel Road, Goregaon (East), Mumbai – 400063.”

.....

“52. The Plaintiff have not filed any other suit save and except the above either in this Hon’ble Court or in any other Court touching the subject matter of this suit. The suit is not barred by law of limitation. The Defendants have not served any copy of the Caveat upon the Plaintiff in respect of the above suit. The suit premises is situated within the limits of P/South ward of the Defendants. The Plaintiff undertake to withdraw the suit No.1453/2015 by leave of the court.”

3.2. It will be pertinent to note the reliefs prayed for by the Respondent No.1 in the suit before the Trial Court. The prayers are:

“a) That this Hon’ble court be pleased to declare that the Notice issued under Sec 351 of the BMC Act Bearing Ref No. D.O.-1(AEBF P/S Ward)/D-4116/351-3247/48 dated 16.04.2015 and the speaking order bearing Ref no. No. AC/PS/B-48/SR/77/A.E. (B&F) dated 19/05/2015 area adm.26 X 26 = 676 sq. fit. is nullity, null, void, inoperative and issued without jurisdiction, without hearing, malafide, bad-in-law, and not enforceable against the plaintiff and liable to be quashed and set aside in respect of the suit premises viz. Kedarnath

Gupta Chawl, IB Patel Road, Goregaon (East), Mumbai-400063.

b) That this Hon'ble court by permanent order and direction, it may be ordered and directed to the defendants to restore, reconstruct, re-erect the suit premises as set out in the notice/prayer clause (a) above in the same and similar position as it was on 16.01.2017 at the cost of the defendants in respect of the suit premises viz. Kedarnath Gupta Chawl, IB Patel Road, Goregaon (East), Mumbai- 400 063, 26 X 26 = 676 sq.ft.

c) In alternate to prayer clause (b), that this Hon'ble Court by decree and order, it may be directed to the defendants to permit the plaintiff to restore, reconstruct, re-erect the suit premises as set out in the notice/prayer clause (a) above in the same and similar position as it was on 16.01.2017 at the cost of the plaintiff in respect of the suit premises viz. Kedarnath Gupta Chawl, IB Patel Road, Goregaon (East), Mumbai-400063, adm.26 'X 26' = 676 sq.ft."

4. Perusal of the above pleadings would confirm that the earlier suit was filed with respect to the same cause of action which was withdrawn by Respondent No.1 with liberty to file a fresh suit before the Trial Court. That admittedly, Petitioner was impleaded as a party Defendant in the earlier suit. However, in the fresh suit which was filed, Petitioner has not been impleaded as a proper and necessary party and has been deleted.

5. Being aggrieved, Petitioner therefore filed Application seeking impleadment under Order I Rule 10 of the Civil Procedure Code, 1908 (for short "**CPC**") in the suit before the learned Trial Court.

6. Mr. Tiwari, learned Advocate for Respondent No.1 has vehemently opposed the impleadment of Petitioner as also grant of relief in the present Writ Petition. In support of the impugned order

he has contended that it has been passed correctly in accordance with law. He would submit that Petitioner is not a proper and necessary party in the suit filed before the Trial Court since it concerns challenge to impugned notices issued by the Corporation in respect of the structure of Respondent. According to him, Respondent No.1 is the sole owner of the structure and it does not concern the Petitioner.

6.1. He has drawn my attention to paragraph Nos.4 to 10 of Respondent No.1's affidavit in reply filed before the Trial Court to oppose the impleadment Application which is appended at page Nos. 323 to 332 of the Petition and contended that for the reasons stated therein, impleadment of Petitioner is not necessary.

6.2. He would further submit that there are two separate substantive disputes / cases pending as on date with respect to entitlement of the structure as well as the land beneath before the Small Causes Court (licensee eviction proceedings) as well as this Court (declaration / cancellation of the conveyance) between the parties.

6.3. In that view of the matter, Mr. Tiwari would submit that there is no necessity of impleadment of Petitioner in the suit before the learned Trial Court.

7. I have perused the record and pleadings of the case with the help of both the learned Advocates. Submissions made by Advocates

has received due consideration of the Court.

8. As alluded to hereinabove in paragraph Nos.44 and 52 of the suit plaint, by virtue of the averments made therein it is not disputed that the Petitioner was impleaded as a proper and necessary party in the earlier suit filed by Respondent No.1. That apart, it is seen that the cause of action in the earlier suit as well as the present Writ Petition is admittedly the same.

9. Record of the present case indicates that Respondent No. 1 was unsuccessful in obtaining any protective order from the Court of law in respect of his structure after he was served with the statutory notice under Section 351. It is seen that after consideration of the documents submitted by Respondent No. 1, a detailed order was passed declaring the impugned structure as totally illegal and unauthorized. The structure was thereafter demolished by the Corporation. Record indicates that Respondent No. 1 reconstructed the very same structure partly and claimed protection for them. A claim was made by Respondent No. 1 to seek regularization by filing various proceedings. It is seen that Respondent No. 1 also managed to procure ad-interim protection for the said structure. Thereafter the matter had travelled to this Court. In one such order dated 11.03.2017 passed by this Court in A.O. No. 747 of 2015, this Court has noted the submissions made by the learned counsel for

Respondent No. 1 that *“even the owner of the land on which the structure is situated can be heard by Municipal Corporation of Greater Mumbai (MCGM) when the proposal for regularization is considered.”*

10. Be that as it may, Respondent No. 1 cannot therefore contend that he would implead or not implead the Petitioner as a proper and necessary party at his own will and desire. What is pertinent to be noted is the fact that the Petitioner was a party Defendant in the earlier Suit No. 1453 of 2015 filed by Respondent No. 1 which was withdrawn by him with liberty to file a fresh suit on the same cause of action. In the affidavit in reply before the learned Trial Court and alluded to herein above, Respondent No. 1 merely states that Petitioner has no locus standi and / or any claim in respect of the structure of Respondent No. 1 and hence he is not a proper and necessary party. That apart it is submitted by Respondent No. 1 that he was ill advised to implead the Petitioner as Defendant in the earlier suit. It is however pertinent to be noted that Respondent No. 1 now in the present suit seeks reconstruction of the suit structure on the Petitioner's property i.e. the land owned by the Petitioner. Once Respondent No. 1 seeks such a relief, the Petitioner who is admittedly owner of the land on which reconstruction is sought becomes an interested party and has to be impleaded. Mere perusal of the plaint and the reliefs prayed for by Respondent No.1 in the suit

filed before the learned Trial Court would show that impleadment of the Petitioner is necessary even otherwise. In the alternative relief i.e. prayer clause (c), Respondent No.1 has specifically prayed for a direction to Defendants (Corporation) to permit him to restore / reconstruct / re-erect the suit premises which was demolished and the dimension of the proposed structure has also been stated therein. Undoubtedly, this restoration / reconstruction and re-erection of the suit premises is on the land admittedly belonging to the Petitioner and therefore Petitioner is a proper and necessary party. Learned Trial Court has completely ignored the aforementioned aspect and passed the impugned order.

11. In that view of the matter, Petitioner ought to have been impleaded as a proper and necessary party. That apart, perusal of the impugned order shows that the learned Judge has returned his findings on the basis of the decision of the Supreme Court in the case of *Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay and Ors.*¹. However, Mr. Godbole would submit that the said decision of the Supreme Court in the facts of the present case is clearly distinguishable. He places reliance on the decision of the learned Single Judge of this Court in the case of *Arun R. Singh and Anr. Vs. Municipal Corporation of Greater Mumbai and Ors.*² and

1 2017 (6) ALL MR 420 (S.C.)

2 2018 SCC Online Bom 20349

*Nimesh J. Patel Vs. Municipal Corporation of Greater Mumbai and Ors.*³ in support of his submissions.

12. Perusal of the aforesaid decisions would show that the cause of action is required to be seen in so far as the filing of the suit proceedings is concerned. Perusal of the pleadings in the suit would show that the suit filed before the learned Appellate Court is in respect of the same cause of action as that in the earlier suit. Most importantly, considering that Petitioner is the owner of the land and rights of Respondent No.1 not having been crystallized in respect of the said land and considering pendency of the suit proceedings in this Court as also the licensee eviction proceedings in the Small Causes Court, the Petitioner becomes a proper and necessary party to the suit before the trial Court.

13. For all the above reasons, the impugned order dated 18.11.2022 deserves to be interfered with and the same is therefore quashed and set aside.

14. Chamber Summons No.934 of 2018 stands allowed in terms of prayer clauses 'a' and 'b'.

15. Impleadment of the Petitioner be done within a period of two weeks from today.

3 2021 SCC Online Bom 6588

16. At the request of both the learned Advocates appearing for the parties, the learned City Civil Court is requested by this Court to hear and decide Notice of Motion No.1644 of 2017 within a period of ten weeks from today.

17. At the request of Mr. Godbole and considering the impleadment of the Petitioner in the suit before the learned City Civil Court, Reply to the Notice of Motion is permitted to be filed by the Petitioner within a period of four weeks from today. Rejoinder, if any shall be filed within two weeks thereafter.

18. The learned City Civil Court is directed to dispose of Notice of Motion within a period of four weeks thereafter.

19. Writ Petition is allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

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