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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4344 OF 2024

Dilip N. Somaiya

.. Petitioner

Versus

Mohanlal M. Jain and Ors.

.. Respondents

-
- Mr. Mahadeo A. Choudhari a/w. Ranveer Choudhari and Ms. Trisha Choudhari, Advocates for Petitioner.
 - Ms. Premlata Jain, Advocate for Respondents.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024.

P.C.:

- 1.** Heard Mr. Choudhari, learned Advocate for Petitioner and Ms. Jian, learned Advocate for Respondents.
- 2.** After hearing Mr. Choudhari on 03.04.2024, this Court had passed the following order:-

“1. Heard Mr. Choudhari, learned Advocate for Petitioner.

2. The impugned order dated 07.02.2024 dismisses Chamber Summons No.1455 of 2023 of the Writ Petitioner – Applicant seeking impleadment in the Suit proceedings before the learned Trial Court. Suit is filed by 14 members out of 17 members of a commercial Society which has been constructed by the Writ Petitioner – Applicant being the owner of the land on which the said building is standing.

3. Mr. Choudhari in his usual fairness at the outset informs the Court that the Society has filed Suit in the Civil Court seeking declaration against the Writ Petitioner – Applicant. The learned Trial Court decreed the Suit and directed the Applicant to issue lease deed to the Society.

4. Being aggrieved, Writ Petitioner – Applicant has

filed First Appeal and the decree of the Trial Court has been stayed in First Appeal. In the above background, he would submit that Writ Petitioner – Applicant is concerned with the larger area of the land which is appurtenant to the building of the Society, which is still vacant and the Writ Petitioner – Applicant has a substantive right in that land. He would submit that due to unauthorized alterations and additions carried out by some of the members of the Society, Writ Petitioner – Applicant filed complaints with the Municipal Corporation of Greater Mumbai (for short “MCGM”). MCGM acted on the complaints filed by the Writ Petitioner – Applicant and issued statutory notices under Section 53 of the Maharashtra Regional and Town Planning Act, MRTP Act, 1966 to the delinquent members of the Society. The said notices have been challenged by 15 members by filing the Civil Suit in the Bombay City Civil Court. In that Suit proceedings, MCGM has been impleaded as the sole Defendant.

5. In that view of the matter, Writ Petitioner – Applicant filed Chamber Summons No.1455 of 2022 seeking his impleadment. That Chamber Summons has been dismissed. Hence, the present Writ Petition.

*6. The issue of impleadment of the owner of the property is no longer res intergra in view of the decision of the Division Bench in the case of **Ashok Babulal Avasthi Vs. Munna Nazimuddin Khan and Anr.**¹ The issue with respect to impleadment of the landlord / owner of the property as a proper and necessary party in proceedings, rather Suit proceedings filed to challenge the BMC notices issued to the tenant/occupant in respect of unauthorized construction is now well settled and the Division Bench of this Court has held that if there is any refusal to implead the landlord as a proper party, then such refusal would be improper use of discretion and would be liable to be set aside. The said decision of this Court has also been upheld by the Supreme Court in SLP Diary No.5545 of 2024 by its order dated 12.02.2024.*

7. In that view of the matter, impleadment of the owner of the property is necessary and hence the impugned order is prima facie on the face of record not maintainable and deserves to be set aside.

8. In view of the above, Respondents are directed to take cognizance of this order and remain present on the next adjourned date and offer their defence in law, if any.

9. Hence, issue notice to the Respondents. Humdast permitted.

10. In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by

¹ WP No.6933 of 2022 decided on 29.11.2023.

any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

11. *After receiving notice, Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.*

12. *It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.*

13. *Stand over to 16th April, 2024 at 02:30 p.m.*

14. *On the next adjourned date, if Respondent do not remain present despite having been served, this Court shall not await the presence of the Respondents and shall proceed with the hearing of the Writ Petition strictly in accordance with law and determine the same after hearing the Petitioner.”*

3. Today, Ms. Jain, learned Advocate appears on behalf of Respondents who are the Plaintiffs in the Suit filed before the learned Trial Court. She would submit that there is absolutely no necessity of impleadment of the Intervenor – Writ Petitioner on several grounds. One of the principal ground which she would stress is that the Writ Petitioner is not the owner of the Suit property. In so far as this ground is concerned, admittedly there is a statutory First Appeal filed by the Writ Petitioner against a declaratory decree in this Court in which the declaratory decree in favour of the Society has been stayed. It is seen that the Suit before the Trial Court is not filed by the Society, but 14 out of 17 members.

4. In so far as the Writ Petitioner is concerned, I have impressed upon Ms. Jain that this Court is concerned with the impleadment, rather issue of impleadment of the owner of the Suit property in the

proceedings filed before the Trial Court. I have also impressed upon the Plaintiffs that the Division Bench of this Court has categorically held that non impleadment of the owner of the property in a Suit filed by the occupants of the property with respect to challenge maintained to statutory notices issued by the Corporation would be an improper use of discretion by the Court.

5. As delineated in paragraph No.6 of my previous order, the Supreme Court has also upheld the decision of the Division Bench of this Court and in that view of the matter, impleadment of the Intervenor – Writ Petitioner in the Suit proceedings filed by the Plaintiffs as a proper and necessary party is inevitable. Considering the contentions raised on behalf of the Plaintiffs which are not considered on merits, save and except the issue of impleadment, the impugned order dated 07.02.2024 is quashed and set aside with a direction to implead the Intervenor – Writ Petitioner as a proper and necessary party i.e. as Defendant No.2 in the Suit proceedings.

6. It is however clarified that, all contentions of the Plaintiffs are expressly kept open and nothing shall preclude the Plaintiffs from taking out any appropriate Application as available to the Plaintiffs in law and in the event if such an Application is filed by the Plaintiffs, the same shall be dealt with and decided by the learned Trial Court strictly on its own merits.

7. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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