

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5473 OF 2024

Yogendra Mohan Belwalkar

.. Petitioner

Versus

Shyamsunder Varshney and Anr.

.. Respondents

-
- Mr. Sanjeev Singh i./by Ritesh Singh, Advocate for Petitioner.
 - Mr. Pradeep M. Patil, Advocate for Respondent No.2 – BMC.
 - Mr. Shamsunder Varshney – Respondent No. 1 present in person
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 25, 2024

P.C.:

1. Heard Mr. Singh, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent No. 2 – BMC and Respondent No. 1 in person.

2. The present Writ Petition takes exception to the order dated 24.11.2023 passed by learned Trial Court in Chamber Summons No.672 of 2022 whereby impleadment of the landlord as a proper and necessary party in suit filed by the tenant (Respondent No. 1) to challenge the statutory notice issued under Section 351 of MMC Act, 1888 stands rejected.

3. As seen and decided by the learned Division Bench of this Court in case of **Ashok Babulal Avasthi V/s. Munna Nazimuddin Khan**¹ dated 29.11.2023, impleadment of landlord cannot be denied by the

¹ WRIT PETITION NO.6933 OF 2022.

learned Trial Court as the Division Bench has held that refusal to permit such a joinder by not accepting the landlord / owner as a proper party would be improper use of discretion and such an order is liable to be set aside. The judgment of Division Bench is upheld by the Supreme Court by its order dated 12.02.2024. Respondent No.1 who is the Plaintiff before the Trial Court is present in Court in-person alongwith his wife. After taking assistance from his wife, he has made one submission and filed six documents contending the Petitioner is a false person.

4. Be that as it may, I am not concerned whether Petitioner is a false person or otherwise. All that I am concerned in the present proceeding is impleadment of the party which has been wrongfully denied by the learned Trial Court. Respondent No.1 has addressed in-person for a good ten minutes. In the course of his address, he has placed before me the following documents and requested me to look through them:-

- (i) Case Details of AOST.81514 of 1994;
- (ii) Order dated 14.08.2017 below Exhibit-1 in RAE & R. Suit No.608 of 1992.
- (iii) Copy of plaint in Suit No.2631 of 2022.;
- (iv) Affidavit-in-Reply of Respondent No.7 to the Writ

Petition (Stamp) No.3700 of 2022;

(v) Citation in case of **Mohamed Hussain Gulam Ali Shariffi Versus Municipal Corporation of Greater Bombay and others²**;

(vi) Citation in case of **Anil Nair Versus Anjana Viren Shah and Anr.³**.

5. Out of these six documents, last two are citations are of the Courts. I have perused the same. None of the aforesaid documents are relevant for consideration of the present case. All that Respondent No.1 would submit repeatedly is that there has been previous litigation in respect of the larger suit property in respect of which Court has passed several orders and several parties have filed pleadings against each other. All four documents which are produced are also not relevant as they are not concerned with the subject matter in the Suit proceeding and are completely alien. One citation has been procured by him from one of his family friend and one citation is provided to him by Advocate for Petitioner himself as told by him. Both citations are completely irrelevant and do not touch upon the merits of the present matter at all. In the present case, as delineated by the Division Bench in paragraph Nos.9 to 14 in its decision dated 29.11.2023, the impleadment of the Petitioner being landlord of the suit property in

² (2020) 14 Supreme Court Cases 392.

³ 2023 (3) Bom.C.R. 588.

respect of which statutory notices have been received as proper and necessary party to the suit proceedings is required to be allowed. It cannot be denied.

6. It is seen that the impugned order is dated 24.11.2023. It has been passed prior to the order passed by the Division Bench of this Court and it did not have the benefit of the order passed by the Division Bench.

7. In view of the above, the impugned order dated 24.11.2023 is clearly not sustained. The impugned order dated 24.11.2023 is quashed and set aside. Defendant No.2 is allowed to be impleaded by this Court to the Suit proceedings. Chamber Summons No.672 of 2022 stands allowed. The suit to proceed on its own merits and strictly in accordance with law. All contentions of both parties are kept open.

8. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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