

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5084 OF 2024

Modern Tanners Co-operative Society Ltd

.. Petitioner

Versus

Farooq Maqbool Zafar Shaikh & Ors.

.. Respondents

.....

- Mr. P.G. Thorat a/w Ms. Aditi Naikare for Petitioner
- Mr. Rakesh Pathak for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 19, 2024

P. C.:

1. Heard Mr. Thorat, learned Advocate for Petitioner and Mr. Pathak, learned Advocate for Respondent No. 1.

2. Petitioner is the proposed Defendant in the Suit proceedings whose impleadment has been rejected by virtue of the impugned order dated 20.01.2024 passed by the learned Trial Court. Being aggrieved thereby, present Writ Petition is filed.

3. At the outset, Mr. Pathak appearing for Plaintiff in the Trial Court in his usual fairness would inform the Court that in the interregnum, the subject Suit structure in respect of which statutory notice was issued under Section 351 of the MMC Act and which is under challenge in the Suit proceedings has been demolished by the Municipal Corporation. The effect of this statement is that the cause of action namely the Suit structure does not exist in respect of which

the statutory process has been issued by the Corporation. Once that is the status and position, then there is no cause of action available to the Plaintiff in so far as the challenge to the statutory notice is concerned. The Suit has become infructuous. However, Mr. Pathak would argue that there is a remedy available to the Plaintiff (Respondent No. 1 herein) to take out Chamber Summons and seek amendment to the Suit proceedings as Plaintiff is aggrieved with the demolition of the Suit premises in the interregnum and desires to seek directions for reconstruction / restoration of the Suit structure as also compensation from the Municipal Corporation for their action of demolition. If that be the case and if Plaintiff is entitled to maintain any such action, it can only be by a separate proceedings since it would constitute a separate cause of action. Allowing any such amendment to the Suit proceedings would undoubtedly change the nature of the Suit proceedings in its entirety. This is assuming that the Suit structure still stands. However, in view of the above facts, the Suit proceeding has become infructuous and the same therefore stands dismissed before the Trial Court. Needless to state that right of Plaintiff - Respondent No.1 to seek reconstruction / restoration of his premises as also seek any compensation whatsoever with respect to its demolition of or in lieu thereof is expressly kept open to be agitated by

the Plaintiff (Respondent No.1 herein) in an appropriate proceedings, if so available to the Plaintiff, in law.

4. In view of the demolition of the Suit premises, this Court has not decided the right of Petitioner with respect to Petitioner's impleadment as the cause of action now does not survive and the Suit is dismissed. Once the Suit is dismissed, the interlocutory order is redundant. Hence no orders are passed in the Writ Petition as Petition cannot be decided in the above facts.

5. With the above observations and findings, Writ Petition stands disposed and L.C. Suit No. 2121 of 2021 before the Trial Court stands dismissed.

Amberkar

[MILIND N. JADHAV, J.]

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