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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9661 OF 2024

Ramesh Rajaram Todankar

.. Petitioner

Versus

Fasial Ahmed Abdulla and Anr.

.. Respondents

-
- Ms. Ranjana Todankar, Advocate for Petitioner.
 - Mr. S.S. Kudalkar, Advocate for Respondent No.1.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 15, 2024.

P.C.:

1. Heard Ms. Todankar, learned Advocate for Petitioner and Mr. Kudalkar, learned Advocate for Respondent No.1.

2. By virtue of the impugned order dated 13.07.2023, Application for impleadment of one of the co-owners of the property stands rejected.

3. It is averred by the Writ Petitioner – Ramesh Rajaram Todankar that he is the owner of the property and he in support of his ownership has placed the property register card of the Suit property on record which shows his name as one of the beneficiary owner of the Suit property.

4. The Suit is filed by one Fasial Ahmed Abdulla to challenge a statutory notice issued under Section 351 of the Mumbai Municipal

Corporation Act, 1888 (for short “**MMC Act**”).

5. On 13.07.2023, the learned City Civil Court has rejected the Application of impleadment of the Writ Petitioner – owner. However, the Division Bench of this Court thereafter has passed a judgment in the case of *Ashok Babulal Avasthi Vs. Munna Nazimuddin Khan and Anr.*¹, and 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 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 and necessary party, then such refusal would be an 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.

6. Mr. Kudalkar, learned Advocate for Respondent No.1 would submit that Respondent No.1 is a licensee of the Suit premises and he has been inducted as licensee by the co-owners themselves.

7. Be that as it may, once it is an agreed fact that the Plaintiff is a lessee / licensee / tenant of the Suit property, impleadment of the landlord in such a Suit proceedings whether challenge is maintained to the statutory process of the Municipal Corporation with respect to the

¹ WP No.6933 of 2022 decided on 29.11.2023.

Suit premises is and has been allowed by this Court. In that view of the matter, submissions made by Mr. Kudalkar are not acceptable.

8. In that view of the matter, the impugned order dated 13.07.2023 is not sustainable and is quashed and set aside.

9. The learned City Civil Court shall permit impleadment of the Writ Petitioner as Defendant No.2 in Long Cause Suit No.1049 of 2018. Plaintiff is directed to carry out the amendment for impleadment of the proposed Defendant No.2 i.e. Petitioner before me within a period one week from today in the Suit proceedings. Copy of the amended plaint and this order shall be served on Defendant No.2. After the amendment is carried out, Suit shall be thereafter be proceeded with strictly in accordance with law and on its own merits without being influenced by any of the observations made by the Court in the impugned order or this order.

10. All questions of both parties are expressly kept open before the learned Trial Court.

11. Parties to act on an authenticated server copy of this order.

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

[MILIND N. JADHAV, J.]

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