

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

Writ Petition No.12640 of 2024

Jehangir Noshir Irani & anr. ... Petitioners.

V/s.

Indus Towers Limited and Others ... Respondents.

Mr. Drupad S. Patil a/w. Mr. Suyash Sule	Advocate for the Petitioner
Mr. Siddhesh Rajput i/b. Himanshu Vidhani	Advocate for Respondent No.1.

CORAM : S.M. MODAK, J

DATE : 08 October 2024.

P.C. :

Heard learned Advocate for the Petitioner-intervenor and learned Advocate for Respondent No.1-Plaintiff. The affidavit filed by the Respondent No.1 is taken on record. Though the Petitioner claims that it is a heritage building, it is disputed by Respondent No.1. Even they have claimed that there is a permission granted by the Municipal Corporation for erection of the mobile tower. Respondent Nos.2 and 3 are the Corporation and the officer. It is claimed that they have consented for the present Petition.

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2. There is a suit filed by Respondent No.1 in the Court of City Civil, Mumbai against the Corporation. The prayers are for “*declaration and injunction*”. The Corporation has issued several

notices to Respondent No.1 about removal of the mobile tower erected on the terrace of the building located at Manhaynoos Casbah, situated at 3, Sea Face, Chowpatty, Mumbai. Respondent No.1 has challenged those notices by filing a Suit.

3. During pendency of the Suit, the present Petitioner has filed Chamber Summons for impleadment. It is rejected as per order dated 12 December 2023. This order is challenged.

4. I have gone through the order and the observations in the judgment in the case of *Arun R. Singh and another vs. Municipal Corporation of Greater Mumbai and others*¹.

5. Whether building is heritage or not and whether the permission is granted or not are not relevant for deciding the impleadment. It is true that provisions of Order 1 Rule 10 of CPC are very clear. There is a difference in between the necessary party and proper party. The **necessary party** is a party without whose presence effective and complete adjudication of the *lis* cannot be made whereas the **proper party** is the party against whom there is no relief sought but who is necessary for complete and effective adjudication of the dispute. This is what held by the Hon'ble Supreme Court in case of *Aliji Momonji & Co. v/s. Lalji Mavji*².

6. When I have read the impugned order, the learned Judge has

¹ 2018 SCC OnLine Bom 20349

² (1996) 5 SCC 379

rejected the prayer for the reason that the present Petitioner is not concerned with the dispute in between Respondent No.1 and Corporation. It is important to note that this Petitioner has made several complaints to Municipal Corporation of Greater Mumbai and Maharashtra Housing and Area Development Authority about the inconvenience faced due to the erection of the tower. The intervenor is occupant of the flat below terrace and he is going to be affected due to adjudication of *lis*. He is proper party. If the suit is decreed, this Petitioner is going to be affected. So this Court feels that his presence is required.

7. So I am inclined to allow the petition. Hence, following order is passed.

ORDER

- (i) The Petition is allowed in terms of prayer clause (a).
- (ii) The order dated 12 December 2023 passed by the Court of City Civil, Bombay is set aside.
- (iii) The Chamber Summons No.449/2022 is allowed.
- (iv) Respondent No.1 is directed to join present Petitioner as a party respondent. Necessary amendment be carried out in the Suit within four weeks

7. It is made clear that the trial Court is to decide the suit on the basis of the evidence. All contentions are kept open.

(S.M. MODAK, J.)