

Soparkar

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

WRIT PETITION NO.13184 OF 2024

Pallavi Jaiprakash Vaidya and ors.

Petitioners/
.. Plaintiffs

Versus

Purnachandra H. Kanani and ors.

Respondents/
.. Defendants

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- Mr. Yash Tiwari with Mr. Kiran Mishra i/by M/s Y. K. Tiwari & Co., Advocates for Petitioners.
 - Mr. Shishir Joshi i/by Ms. Priti Joshi, Advocates for the Respondents No.1 to 5.
 - Mr. Yogendra M. Koli i/by M/s C. K. Legal, Advocate for the Respondents No.6, 8 and 9.
 - Mr. Bhalchandra Palav with Mr. Aniket Dighe i/by M/s Bhat & Co., Advocates for the Respondents No.10 and 11.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 30, 2024.

P.C.:

- 1.** Heard Mr. Tiwari, learned Advocate for Petitioners.
- 2.** The order impugned in the present Writ Petition is dated 20th June, 2024. It allowed Chamber Summons No.672 of 2024 for impleadment of Applicants/Intervenors who filed the Chamber Summons before the Trial Court.
- 3.** I have heard Mr. Tiwari, learned Advocate appearing for the Plaintiffs before the Trial Court who has filed the present Writ Petition to challenge the impugned order dated 20th June, 2024. He

would submit that though the Suit has been filed by the Plaintiff in a representative capacity for himself and for and on behalf of all other flat occupants/tenants in the building, impleadment of Applicants/Intervenors in the suit proceedings, if allowed would lead to internal rifts and issues between the flat occupants/tenants of the subject building. He would submit that Applicants/Intervenors have an interest which is commercial in nature with respect to their occupancy and it is on a completely different footing altogether than the interest espoused by Plaintiff on behalf of the flat occupants/tenants of the subject building. He would submit that if Applicants/Intervenors are directed to file a separate suit proceedings altogether, it would be in their interest since there is a clash of rights between the parties. In support of his submissions, Mr. Tiwari would place before me a decision of this Court dated 17th July, 2013 passed in Writ Petition No.6122 of 2013 wherein impleadment of a proper and necessary party under Order 1 Rule 10 of the Civil Procedure Code, 1908 ("CPC") was declined by this Court. I have perused the said order. The said decision incidentally had been passed in a case for impleadment of landlord of a property which was refused by this Court in the Suit filed by a tenant challenging the mandatory/statutory notice issued by the Municipal Corporation for unauthorized construction. This Court held that impleadment of landlord would widen the scope and dispute before the Trial Court and hence landlord was precluded from being

impleaded. The said decision however cannot apply to the present case. The law has thereafter has changed. By a decision of the Division Bench of this Court dated 29th November, 2023 in the case of *Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan and anr., in Writ Petition No.6933 of 2022*, this Court has categorically held that in every such proceeding the landlord would be a proper and necessary party and while doing so this Court has explained the imprimatur, scope and ambit of the provisions of Order 1 Rule 10(1) read with Rule 10(2) of CPC. The said decision of the Division Bench has been upheld by the Supreme Court by its order dated 12th February, 2024.

4. In that view of the matter, the decision cited by Mr. Tiwari cannot apply to the facts and circumstances of the present case. In any event, the facts of the present case are also completely different. This is not a dispute between landlord and tenant. The learned Trial Court while delineating and deciding on issue No.1 has in paragraph No.11 onwards referred to the facts of the case which are incidentally not denied by Mr. Tiwari. The Suit has been filed in a representative capacity by the Plaintiff and this crucial fact is not denied.

5. In that view of the matter, I do not find any reason whatsoever to interfere with the cogent and reasoned findings returned by the learned Trial Court in paragraph No.17 of the order dated 20th June, 2024. Once the suit is filed in a representative

capacity, all common interests of all occupants/tenants of the building will have to be espoused by the Plaintiff. The Plaintiff cannot pick and choose the tenants/occupants to support the Plaintiff and deny representation to other similarly placed tenants/occupants in the representative Suit. Undoubtedly, in a given case, interest of certain occupants and tenants will be different if they fall into residential or commercial or other categories or depending upon the nature of their holding in the subject building. But that will not deprive them representation in a Suit filed to espouse their cause.

6. In that view of the matter, the impugned order does not call for any interference and I am not inclined to interfere with the same. Resultantly, the order dated 20th June, 2024 is sustained. The Writ Petition is therefore, dismissed.

7. Resultantly, the amendment for impleadment of the Applicants which has been allowed by the learned Trial Court in Chamber Summons No.672 of 2024 shall be carried out by the Plaintiffs before the Trial Court within a period of seven days from today. I am informed that the suit proceeding before the Trial Court is kept on 8th October, 2024. The amendment shall be permitted to be carried out before that date. Considering the nature and cause of the suit proceedings which has been filed for redevelopment of the subject building, Mr. Joshi, learned Advocate for Respondents No.1 to 5

informs the Court that Application under Order 1 Rule 8 of the CPC seeking leave of the Trial Court has been filed by Plaintiffs which is pending. He would urge this Court to pass directions for hearing of the said Application urgently as it would enure to the benefit of all parties in the Suit. Considering imprimatur of this Court under the provisions of Article 227 of the Constitution of India, I direct the learned Trial Court to hear the said Application filed by the Plaintiff under Order 1 Rule 8 of the CPC as expeditiously as possible and in any event, within a period of five weeks from 8th October, 2024.

8. Before parting, I must appreciate the conduct and the precise manner in which Mr. Tiwari, learned Advocate for Plaintiffs-Petitioners has argued the present matter without making any irrelevant submissions.

9. Writ Petition is disposed.

[MILIND N. JADHAV, J.]