



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16982 OF 2024**

Avant Infra Oshiwara Pvt. Ltd. ... Petitioner
versus
Ram and Co. and Anr. ... Respondents

WITH
WRIT PETITION NO.16983 OF 2024

Avant Infra Oshiwara Pvt. Ltd. ... Petitioner
versus
PCC Infrastructure Pvt. Ltd. and Anr. ... Respondents

Mr. Rashmin Khandekar with Mr. Pranav Nair i/by Mr. Aditya Lele, for Petitioner in WP No.16982 of 2024.

Mr. Karl Tamboly with Mr. Aadil Parsurampurua i/by Mr. Shivam Dubey for Petitioner in WP No.16983 of 2024.

Mr. Dipen Merchant, Sr. Advocate with Mr. Nigel Quraishy, Mr. Gaurav Jangle with Mr. Bharath Senan i/by I.V.Merchant and Co., for Respondent No.1 in both Petitions.

Mr. Aseem Naphade with Ms. Nishtha Malik, Ms. Sonali Kochar, Ms. Bijal Soni, Mr. Tejas Horembe and Ms. Naqqiya Saifee i/by NAS Legal for Respondent No.2 in both Petitions.

CORAM: N.J.JAMADAR, J.

DATE : 27 JANUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. These Writ Petitions arise out of almost identical facts and are, therefore, taken up for admission together.
3. The parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court.
4. Respondent No.2 – Defendant is the owner of the land bearing CTS

No.563, Survey No.26, Hissa No.15 (Part) of Village Oshiwara and CTS No.31 (Part), Survey No.26, Hissa No.11 (Part) of Village Bandivali.

5. Ram and Co. - Plaintiff in Suit No.932 of 2024 (Commercial Suit No.606 of 2017) asserted that the Defendant had entered into an agreement for sale of the suit property in favour of the Plaintiff on 7 March 1983, and, thus, prayed for a decree for specific performance of the said agreement. The Plaintiff claimed that, even prior to the entering into agreement for sale, the Plaintiff was put in possession of the suit property.

6. In Commercial Suit No.979 of 2024 (Suit No.604 of 2017), PCC Infrastructure Pvt. Ltd. - Plaintiff therein, prayed for a decree for specific performance of the contract to sell the suit property executed by the Defendant on 7 March 1983. The Plaintiff also claimed to be in possession of the suit property since prior to the agreement for sale.

7. There are slums over the suit property. In the year 2005, the suit property was declared a Slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The Plaintiff was appointed as a developer by the society for the slum dwellers. On 5 September 2021, the Society of Slum dwellers terminated the appointment of the Plaintiff as a developer and appointed the Petitioner as a new developer. Proceedings ensued before the CEO, SRA. By an order dated 14 September 2022, the CEO, SRA, dropped the proceedings against Prakash Developers

under Section 13(2) of the Act, 1971. An appeal has been preferred against the said order before the Apex Grievances Redressal Committee and it awaits adjudication.

8. In the intervening period, the Petitioner learnt that Plaintiffs in the respective suits and the Defendant have filed consent terms in the suits which prejudicially affect the rights of the Petitioner. Hence, the Petitioner took out Chamber Summons seeking impleadment in the said suits. By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Chamber Summons, inter alia, observing that the Petitioner who is not a party to the agreement for sale, is not entitled to be impleaded as a party to the suit. Being aggrieved, the Petitioner – new developer, has preferred these Petitions.

9. I have heard Mr. Rashmin Khandekar, learned Counsel for the Petitioner in WP No.16982 of 2024, Mr. Karl Tamboly, learned Counsel for the Petitioner in WP No.16983 of 2024, Mr. Dipen Merchant, learned Senior Advocate for Respondent No.1 – Plaintiff, and Mr. Aseem Naphade, learned Counsel for Respondent No.2 – Defendant in both the Petitions.

10. Mr. Tamboly submitted that under the consent terms, the Defendant has acknowledged that the Plaintiff is in uninterrupted and peaceful possession of the suit property prior to the agreement for sale dated 7 March 1983 and the Plaintiff has been put in possession of the suit property in part performance of

the agreement for sale dated 7 March 1983. The said stipulation in the consent terms is against the weight of the material on record and the situation at site. The acknowledgment of possession of the Plaintiffs, since prior to 1983, when the suit property is in possession of the slum dwellers and the Petitioner as a new developer, has the propensity to affect the rights of the new developer in the proceedings before the authorities under the Act, 1971. Therefore, the Petitioner deserves to be impleaded as a party to the suit and heard on the aspect of the legality of the consent terms.

11. Mr. Rashmin Khandekar submitted that though the Petitioner cannot be said to be a necessary party, in the strict sense of the term, yet the Petitioner has sufficient interest in the subject matter of the dispute to entitle him to be heard. Mr Khandekar submitted that the Court ought to consider the effect test as was enunciated in the case of Chandravati Arun Pathak V/s. Arun Ramavtar Pathak¹. According to Mr. Khandekar, in the least, the Petitioner is entitled to be heard on the aspect of the legality of the consent terms, if the Court does not consider it appropriate to implead the Petitioner as a party Defendant.

12. Both Mr. Khandekar and Mr. Tamboli urged that the learned City Civil Judge was swayed by an order dated 25 January 2024 passed by this Court in the Interim Application filed by the family members of the Defendant, which

1 2024 SCC Online Bom 3451

came to be rejected. Interest of those interveners was materially distinct, urged Mr. Khandekar.

13. It is well recognized that the matter of addition of a party is not one of initial jurisdiction, but exercise of judicial discretion. Order I Rule 10 of the Code enables the Court to add any person as party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Necessary party is one who ought to have been joined as a party and in whose absence, no effective decree can be passed by the Court. Non-impleadment of a necessary party entails the consequence of the dismissal of the suit. On the other hand, a proper party is the person whose presence would enable the Court to completely and effectively adjudicate all the matters in the suit, though no relief for or against him is claimed. An appropriate test to be applied is, whether such a party has a direct interest in the subject matter of the suit in contradistinction to a commercial interest.

14. The nature of the suit is of material significance. The instant suits are for specific performance of the contract. The presence of the Petitioner is not at all necessary to adjudicate the controversy that arises in a suit for specific performance of the contract for sale. The Petitioner is not claiming through the Defendant, either. The Petitioner asserts that the Petitioner has the right

to develop the suit property on the basis of the development agreements purportedly executed by the societies of slum dwellers. The Petitioner has, thus, no direct interest in the subject matter of the suit for specific performance.

15. The Petitioner could, undoubtedly, agitate its rights as a new developer over the suit property in an appropriate proceedings before the appropriate forum. However, the Petitioner cannot seek impleadment in the instant suits on the premise that the acknowledgment of possession, or for that matter the passing of the decree for specific performance, would jeopardise the rights of the Petitioner. In substance, there is neither privity of contract nor identity of the dispute, between the original parties to the suit and the Petitioner.

16. The learned Judge, City Civil Court, thus, committed no error in declining to implead the Petitioner as party Defendant to the suit.

17. The Writ Petitions, thus, stand dismissed.

18. It is, however, clarified that the aforesaid consideration is confined to the prayer for impleadment in the suit and this Court may not be construed to have expressed any opinion on the merits of the dispute over the development rights.

(N.J.JAMADAR, J.)