

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16126 OF 2025**

Suresh Rama Kanchan

..Petitioner

Versus

The Municipal Corporation of
Grater Mumbai and Anr.

...Respondents

Mr. Pradeep Thorat a/w Aditi Naikare, for Petitioner.

Mr. Subhash Bane a/w Avneet Nagpal, for Respondent No. 2.

Mr. Santosh Mali i/b. Komal Punjabi, for Respondent No. 1-
BMC.

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CORAM: N. J. JAMADAR, J.

DATE : 09th DECEMBER 2025

P.C.:

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 15th October, 2025 passed by the learned Judge, City Civil Court, whereby the Chamber Summons taken out by the Respondent No. 2 to implead the Respondent No. 2 as a party defendant No. 2 in L.C. Suit No.962/2022, instituted by the petitioner /plaintiff, came to be allowed.
3. The petitioner instituted the suit assailing the legality and validity of a notice issued by the Municipal Corporation of Greater Mumbai under Section 55 of the Maharashtra Regional

and Town Planning Act, 1966 alleging *inter alia* that, the petitioner had carried out unauthorized construction of MS gate at North and West side of Raj Aditya Building, FP No. 838, Kashinath Dhuru Marg, Agar Bazar, Dadar(w), Mumbai . The Respondent No. 2 sought the impleadment on the ground that the Respondent No. 1 had made a complaint with the Municipal Corporation regarding the unauthorized construction of the gate by the petitioner.

4. By the impugned order the learned Judge, City Civil Court was persuaded to allow the Chamber Summons. The observations in Para No. 4 of the impugned order, which spell out the reasons which weighed with the learned Judge, City Civil Court read as under:

“4. I have gone through the Chamber Summons, say and heard both sides at length. In my view, by way of this Chamber Summons the applicant wants to add themselves as a party of this Suit. If this Chamber Summons is allowed then the nature of real Suit will not changed, nor it will affects the merit of the case. Hence, for the ends of justice and to decide legal controversy between the parties, the Chamber Summons needs to allow as the interest of society is involved in the suit. Furthermore, if this Chamber Summons allowed then no prejudice

will be caused to the either side. Hence, following order:

ORDER

1. The Chamber Summons No. 1201 of 2023 taken by the applicant to add themselves as a party of this Suit is allowed and disposed of, accordingly.

2. Plaintiff is directed to carry out necessary amendment within limitation.

3. Cost in main cause.”

5. It is well settled that, the matter of addition or deletion of a party, is not one of initial jurisdiction but that of judicial discretion to be exercised by the Court. While directing the impleadment of a party, the Court must arrive at a finding that the party sought to be impleaded is either a necessary or a proper party. In the absence of such finding, which is, in a sense, a jurisdictional condition, the Court cannot implead a party against the wish of the plaintiff, who is *dominus litus*.

6. From the perusal of the aforesaid paragraph, it becomes abundantly clear that, the learned Judge, City Civil Court had not at all posed unto himself, the question as to whether, the Respondent No. 2 is either a necessary or a proper party. Hence, the impugned order cannot be sustained.

7. Resultantly, the petition deserves to be allowed and the Chamber Summons is remitted back to the learned Judge, City Civil Court for a fresh decision in accordance with law, after posing unto himself the correct questions in the matter of impleadment of a party.

8. Hence, the following Order:-

:: ORDER ::

- (I) The petition accordingly stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The Chamber Summons is remitted back to the learned Judge, City Civil Court for a fresh decision in accordance with law.
- (iv) In the light of the aforesaid observations all contentions of all the parties are kept open for consideration.
- (v) By way of abundant caution, it is clarified that this Court has not delved into the aspect as to whether the Respondent No. 2 is a necessary or proper party.

[N. J. JAMADAR, J.]