IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16773 OF 2025

Daruwalawadi Co-op. Housing Society Limited, A Society Registered under the provisions of Maharashtra Co-operative Housing Societies Act, 1960, having its office at 31, Dr. Bhadkamkar Marg, Mumbai – 400 008 ...Petitioner

Versus

1. Sita wd/o Pukhraj Chunilal Bafna
2. Shobha Rajeev Surana d/o late Pukhraj Chunilal Bafna
3. Veena Ashok Nahar d/o late Pukhraj Chunilal Bafna
4. Ajay s/o late Pukhraj Chunilal Bafna
5. Sanjay s/o late Pukhraj Chunilal Bafna
6. Amit Builders
7. Honesty Builders Private Limited, A company incorporated under the Companies Act, 1956,
8. State of Mahrashtra ...Respondents

SANTOSH SUBHASH KULKARNI

Digitally signed by SANTOSH SUBHASH KULKARNI
Date: 2026.01.09 20:02:05 +0530

Mr. Murli Patil, a/w Bharati Mahant and Trupti Gage, i/b Divya Shah Associates, for the Petitioner.
Mr. Prathamesh Kamat, i/b Yash Dhakad, for Respondent Nos.1 to 5.
Ms. D. S. Deshmukh, AGP for the State - Respondent No.8.

CORAM: N. J. JAMADAR, J.
DATED: 6th JANUARY, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith, and, having regard to the limited nature of the controversy, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioner – plaintiff takes exception to an order dated 2nd August, 2025 passed by the learned Judge, City Civil Court, Greater Bombay, in Chamber Summons No.1706 of 2025 in Suit No.8918 of 1992 dated 2nd August, 2025, whereby the learned Judge directed that an additional issue, "whether the suit was bad for non-joinder of the necessary parties", be framed.

3. The said Chamber Summons was taken out by defendant Nos.1(a) to 1(e) seeking direction to the plaintiff to amend the plaint in accordance with the Schedule of Amendment (Exhibit-A) appended to the Chamber Summons so as to implead the prospective defendant Nos.4 to 17 and carry out incidental and consequential amendments.

4. The prospective defendants are purportedly the purchasers of the flats in a building known as 'Rajendra Kunj' which was constructed by the Honesty Builders Private Limited – defendant No.3.

5. The background facts necessary for the determination of this petition can be summarized as under:

5.1 The plaintiff had initially instituted Suit No.2632 of 1992 in the High Court seeking specific performance of the contract

executed by defendant Nos.1 and 2 in favour of the plaintiff in respect of the suit flat bearing No.248 admeasuring 3154.60 sq.mtrs. Defendant No.3 came to be impleaded as a party defendant when the plaintiff learnt that the defendant No.1 had entered into an agreement in respect of a portion of the suit property with defendant No.3. An additional relief that, the agreement dated 28th February, 1992 entered into between defendant Nos.1 and 3 was invalid, illegal and not binding upon the plaintiff was sought.

5.2 By an order dated 20th January, 1997, a learned Single Judge of this Court directed the parties to maintain *status quo* in respect of the open land in Plot 'A' pending the hearing and final hearing of the suit, opining that, if the defendants were allowed to construct upon the property, the suit would practically become infructuous.

5.3 In Appeal No.220 of 1997 preferred by defendant No.3, a statement was made on behalf of defendant No.3 that, defendant No.3 was willing to file an undertaking not to create any third party rights in the property in question and/or transfer any constructed portion of the building to any party without the orders of the Court, and not to claim any equity on the ground that construction had been carried out by defendant

No.3. The said statement was accepted and eventually an undertaking came to be filed in the aforesaid terms on behalf of defendant No.3.

5.4 It appears in breach of the aforesaid undertaking, defendant No.3 created third party rights in the flats in the building 'Rajendra Kung' which was allowed to be constructed accepting the aforesaid undertaking. Those purported flat purchasers filed ten Chamber Summonses in Suit No.2632 of 1992 for a direction to the plaintiff to implead the applicants in the said Chamber Summons as defendants. The applicants therein are the proposed defendant Nos.5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 and 17, herein.

5.5 By a common order dated 12th February, 2002, a learned Single Judge of this Court, dismissed all the Chamber Summons observing *inter alia* that the applicants were not the necessary or proper parties and their impleadment in the suit was not warranted.

5.6 The said order was challenged in Appeal No.517 of 2002 and the connected appeals before the Division Bench. By a judgment and order date 27th January, 2006, all the appeals were dismissed recording a categorical finding that the

appellants – proposed defendants were neither necessary nor proper parties.

5.7 Undaunted, defendant Nos.1(a) to 1(e) by filing the instant Chamber Summons, sought a direction to the plaintiff to amend the plaint so as to implead the very same third party applicants as co-defendants, and, in the alternative, frame an additional issue as to whether the suit was bad for non-joinder of the necessary parties.

5.8 By the impugned order, the learned Judge, City Civil Court, rejected the prayer to direct the plaintiff to implead the said third parties as party defendants observing that the defendants cannot seek a direction to the plaintiff to amend the plaint in a particular way. However, the learned Judge was persuaded to allow the Chamber Summons in terms of prayer clause (b) and frame an additional issue of non-joiner of necessary parties.

6. Being aggrieved, the plaintiff has approached this Court.

7. I have heard Mr. Murli Patil, the learned Counsel for the petitioner, and Mr. Prathamesh Kamat, the learned Counsel for respondent Nos.1 to 5 – defendant Nos.1(a) to 1(e), who took out the said Chamber Summons, at some length.

8. Mr. Patil, the learned Counsel for the petitioner, submitted that by the impugned order the learned Judge, City Civil Court, has practically reopened the issue which stood concluded by the orders passed by the learned Single Judge and the Division Bench of this Court that the proposed defendants were neither necessary nor proper parties. The impugned order to frame an additional issue regarding non-joinder of the necessary parties is in teeth of the orders passed by the High Court.

9. In opposition to this, Mr. Kamat, the learned Counsel for respondent Nos.1 to 5, would submit that post the order passed by the High Court in the Chamber Summons and the appeal thereagainst, two developments occurred which justified the framing of an additional issue in regard to the suit being bad for non-joinder of the necessary parties. First, the plaintiff sought additional prayer i.e. prayer clauses (F1) and (F2) and sought appointment of the Court Receiver in respect of the illegal occupants of the disputed building and a direction to the defendants, their servants and agents to demolish building No.2 constructed by the defendants after the order dated 17th April, 1997 passed in Appeal No.220 of 1997 by the Division Bench of the High Court. Second, by an order dated 8th July, 2025, an additional issue "whether the plaintiff proves that

defendant No.3 has constructed building No.2 illegally after the order passed on 17th April, 1997 in Appeal No.220 of 1997 and it needs to be demolished as prayed?", has been framed.

10. In view of the aforesaid developments, according to Mr. Kamat, framing of an additional issue of non-joinder of the necessary parties became absolutely imperative. As the issues arise from the pleadings of the parties, and after framing of the additional issue, the parties have led evidence, at this stage, this Court in exercise of the supervisory jurisdiction ought not to interfere with a procedural order, was the thrust of the submission of Mr. Kamat.

11. To start with, it is imperative to note that defendant No.3 had created third party rights in building No.2 in flagrant violation of the undertaking given to the Court; believing which the Division Bench of this Court had permitted the defendant No.3 to erect the building modifying the *status quo* order passed by the learned Single Judge. It is in that context, the prayer of those third parties to implead them as the party defendants to the suit came to be rejected by the learned Single Judge as well as the Division Bench.

12. As noted above, the Division Bench has observed in clear and categorical terms that those third parties were neither

necessary nor proper parties to the suit. Thus, the issue of impleadment of those third parties stood concluded by the binding orders in the very same suit and it was not open for either those third parties or the defendants to reopen the said issue as it is well recognized the principle of *res-judicata* applies at different stages in the same proceeding.

13. Secondly, and more importantly, the effect of transfer in breach of a injunction order or an undertaking to the Court, was required to be properly appreciated by the learned Judge, City Civil Court. A transfer in breach of the injunction order has been construed to be illegal and non-est in the eye of law.

14. A Division Bench of this Court in the case of ***Keshrimal Jivji Shah and another vs. Bank of Maharashtra and others***[1] considered the question as to whether a transfer of an immovable property in contravention of a prohibitory or injunction order of a Court is illegal or void. Holding that such a transfer is illegal and cannot be recognized, the Division Bench enunciated that such transferee gets no valid title nor does he acquire any rights or interest in the immovable property.

---

1 (2004) 3 Mah LJ 893.

15. In the case of ***Balwantbhai Somabhai Bhandari vs. Hiralal Somabhai Contractor***[2], where the transfer was effected in breach of an undertaking given to the Court, the Supreme Court approved the action of the High Court in declaring that all the sale deeds executed by the contemnors in favour of the purchasers were non-est. The observations in paragraphs 89 and 90 of the said judgment are instructive and, hence, extracted below:

> "89. Thus, although Section 52 of the Act 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.
>
> 90. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as non est. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14.10.2015 passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as non est or void."

16. Realizing the difficulty, Mr. Kamat attempted to salvage the position by canvassing a submission that defendant Nos.1(a) to 1(e) could not have sought a direction to the plaintiff to amend the plaint so as to implead the said third parties, yet, in view of the subsequent amendment in the plaint wherein reliefs of

---

2 (2023) 17 SCC 543.

appointment of Court Receiver and demolition of the building were sought, the issue as to whether the said third parties are necessary parties, was required to be adjudicated.

17. I am afraid to accede to this submission for reasons more than one. Firstly, the Division Bench has held in clear and explicit terms that the proposed defendants were neither necessary nor proper parties. Secondly, the contention that ultimately those third parties may suffer the consequences was advanced when the Chamber Summons taken out by those third parties were decided by the learned Single Judge by order dated 12th February, 2002. The learned Single Judge observed that it was true that the applicants who claimed to be in possession of the certain flats, which were constructed upon the rear portion of the suit property, were likely to be evicted in the case the suit was decreed in favour of the plaintiff. However that fact, by itself, did not make the applicants therein necessary or proper parties. It was further observed that the applicants therein were not without a remedy. They could always proceed against defendant No.3, who had allegedly practiced fraud upon them.

18. In view of the aforesaid observations, the endeavour of Mr. Kamat to wriggle out of the situation by submitting that, on

account of the amendment in the plaint, the issue of non-joinder of the necessary parties was required to be framed and adjudicated, does not merit consideration.

19. The conspectus of the aforesaid discussion is that the learned Judge, City Civil Court, committed an error in framing an additional issue which has the effect of reopening the issue of the proposed defendants being necessary parties, which stood concluded by the binding orders of the High Court. Hence, the petition deserves to be allowed.

20. Thus, the following order:

: O R D E R :

(i) The petition stands allowed.

(ii) The impugned order stands quashed and set aside.

(iii) Rule made absolute.

(iv) No costs.

[N. J. JAMADAR, J.]