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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15378 OF 2024

Dattatraya Ramchandra Chavan
Age : 72 Years, Occupation : Business,
Senior Citizen, Having address at:-
Flat No.101, 1st Floor, Parle Neel
Gangan Co-operative Housing Society
Limited standing on Plot bearing No.
232 of TPS Scheme No.5, Village Vile
Parle, CTS No.1635 of Feroz Shah Mehta
Road, Vile Parle (East), Mumbai : 400057. ...**Petitioner**

Versus

1. **G. Jaykumar**
Age : Adult, Occupation : Business,
Both residing at : Flat No.3 and 4,
Ground Floor, Parle Neel Gangan
Co-operative Housing Society Limited
standing on Plot bearing No.232 of TPS
Scheme No.5, Village Vile Parle, CTS No.
1635 of Feroz Shah Mehta Road, Vile
Parle (East), Mumbai : 400 057.

2. **Municipal Corporation for Greater
Mumbai** : A statutory Body having its
Office at Mahanagarpalika Marg,
Opp. CTS, Fort, Mumbai : 400 001. ...**Respondents**

Mr.S.N.Chandrachud i/b. Mr.Hemant P. Ghadigaonkar a/w Mr.Hitendra Gandhi:-	Advocates for Petitioner.
Mr.Kunal Bhanage i/b. Mr.Akshay Pawar:-	Advocate for Respondent No.1.

CORAM : S. M. MODAK, J.

DATE : 18th NOVEMBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Petitioner-Intervenor and learned Advocate for Respondent No.1 / Plaintiff.

2. In a Suit filed by the Plaintiff, there is a challenge to the action of the Municipal Corporation of Greater Mumbai (“MCGM”) for issuing a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“MMC Act”) dated 17th December 2018 and there is a challenge to the Speaking Order dated 23rd February 2020. According to the Plaintiff, they are illegal and issued / passed in an arbitrary exercise of the power. There is also a permanent injunction sought restraining the Corporation from acting upon those actions.

3. During pendency of the Suit, the present Petitioner being a member of Neel Gangan Co-operative Housing Society Limited and an occupant of Flat No.101, filed a Chamber Summons praying for issuing direction to the Plaintiff to join him as a party Defendant. This Chamber Summons was **dismissed** by the Court of City Civil – Borivali Division, Dindoshi, Mumbai as per the order dated 30th July 2024. That is why, the Intervenor has filed this Writ Petition.

4. Though, all the prayers in the Plaint are against the Corporation who is Respondent No.2 in this Petition, complaints / representations filed / made to the Corporation and documents to show type of action taken is filed along with the Writ Petition. **The prayer made in the Chamber Summons is against the Plaintiff only.** That is why, I have taken up this Writ Petition for final disposal at an admission stage even though, the MCGM is not served and appeared before me.

5. The only issue involved in this Petition is, “*whether a member of a Co-operative Society can seek an impleadment in a Suit filed by another member against the Local Authority when the Society is not a party Defendant*”.

6. Learned Advocate Shri.Chandrachud made following submissions:-

- (a) All action taken by the Corporation is at the behest of the complaints made by the present Petitioner and in fact, when the Corporation has not paid heed to his complaint.
- (b) He was compelled to file a Writ Petition before the Division Bench and there is an order dated 9th January 2020 directing the Corporation to hear him and dispose of the representation dated 20th March 2018.
- (c) The trial Court while dismissing the Chamber Summons has wrongly made observation about the merits of the claim of the Petitioner and he ought to have reserved it.

7. Learned Advocate for Respondent No.1 / Plaintiff supported the order and opposed for any interference in a Writ jurisdiction. He made following submissions:-

- (a) The contents of Affidavit in support of Chamber Summons nowhere show how the Petitioner is going to be affected by the alleged construction and dispute involved in the Suit.
- (b) The Affidavit nowhere avers about joining hands by the Plaintiff with the Society and that is why, the Society is not coming forward to oppose the Plaintiff's claim.
- (c) The averments in the Chamber Summons do not satisfy either of the tests laid down in Order I, Rule 10(2) of the Code of Civil Procedure, 1908 ("**CPC**"). He cannot be said as a proper or necessary party.
- (d) To buttress his submission, he relied upon the observations by a Division Bench of this Court in case of ***Ashok Babulal Avasthi V/s. Munna Nizamuddin Khan and Another***¹ and more specifically, the observations in paragraph No.36.
- (e) Even if the nature of alleged violations complained by the Petitioner and depicted in the show cause notice and Speaking Order are considered, it cannot be said that the Petitioner is really affected by those alleged constructions considering its nature.

Consideration

8. It is important to note that the flats occupied by the Plaintiff and

¹ 2023 SCC OnLine Bom 2559

flat occupied by the Petitioner are situated in a building owned by the Society. The flats of the Plaintiff are situated on the ground floor whereas, that of the Petitioner is on the first floor. If, the nature of complaint of an illegal construction is considered, it deals with:-

- (a) An amalgamation of two flats done by the Plaintiff without permission.
- (b) Construction of Opla outside the flats of the Plaintiff in common passage.
- (c) An encroachment in Office premises of the Society.

9. There are complaints filed by the Intervenor to the Corporation Authorities for taking action for these acts against the Plaintiff. It is a matter of record that the Division Bench directed the Corporation to decide the representation after hearing the concerned parties. That order is dated 9th January 2020. Whereas, the show cause notice issued is dated 17th December 2018. (Page No.55). The Speaking Order is passed on 23rd February 2020. (Page No.65). This Court is not expected to make any comment about the merits of the alleged unauthorised construction and validity of issuing notice and passing Speaking Order. **The only issue is about the *locus standi* of the Petitioner.** The Society has neither appeared before the trial Court nor they are before this Court. This Court is not aware why the Society has

not appeared before any Court. On the set of these facts, the claim of the Petitioner needs to be decided.

10. It is true, Order I, Rule 10(2) of CPC gives guidelines as to how a person can be added as a party. There are two tests. They are:-

- (a) Name of the person who ought to have been joined either Plaintiff or Defendant. So to say, without joining him as a party, no relief can be granted. In this case, the Corporation is a proper party because against him, relief is sought by the Plaintiff.
- (b) A party whose presence before the Court is necessary and the test is for deciding the issues involved effectually and completely.

11. I have read the observations in case of ***Ashok Babulal Avasthi*** (cited supra). This was a judgment on a reference because earlier, there were two different views expressed by two learned Judges of this Court. The Division Bench has answered the reference by observing:-

“Landlord or owner of the property is a proper party when there is an action taken restraining the Local Authority from taking action of demolition”.

It is true, in Para No.36, the Division Bench has elaborated, how the landlord is a proper party. The reasoning is ultimately the landlord is the owner of the property and any decision taken by the Court about this property is going to affect the said landlord.

12. No doubt, the relationship in between the landlord and tenant on one hand and the relationship in between a member of the Society and the Society on the other hand, stand on different footing. If, the scheme of the provisions of the Maharashtra Co-operative Societies Act, 1960 (“**MCS Act**”) are perused, the Society is the owner of the entire building and land (subject to conveyance) and person who is a member of the Society is having a right to possess the flat / shop. Now, in this case, no doubt the amalgamation of two flats is an issue which has taken place inside the flat. Other two grievances pertain to construction of Opla in common passage and an encroachment to the Office premises.

13. The trial Court in Para No.12 observed:-

“The Intervenor has not submitted any document against the Plaintiff to show how he is affected due to alleged unauthorised construction of the Plaintiff except words”.

When the Affidavit in support of Chamber Summons is perused, in Para No.21 (Page No.78), the Intervenor has pleaded:-

“Unauthorized structure is adversely affecting the rights of the Applicant as he encroached the society property which is common benefit of the all the members of the society including the Applicant and the same is highly prejudice and causing mental agony to me”.

14. If, there are allegations against the member of constructing Ota in common passage and encroaching the Office premises, no doubt, other member is having every right to make a grievance if his rights as a member are affected. Even though, the Society is not coming forward, it cannot be said that an individual member has to appear before the Court through the Society only. Being a member, he is also having an individual right to make use of common passage and the Office also.

15. If, considered from that perspective, the Petitioner's presence before the trial Court is necessary. Ultimately, the trial Court after evidence, will be deciding whether the notice is as per the law or not. For that purpose, the trial Court is going to hear the Plaintiff and the Corporation. When the Corporation has taken an action at the behest of the Petitioner, certainly his presence before the Court in adjudicating the dispute effectively as well as completely is necessary.

16. The trial Court was wrong in observing that the Petitioner has failed to produce any document which will show how harm is going to cause. **The trial Court has mixed up two issues.** First one, the entitlement of a person to be joined as a party and second, the merits of his contention at the time of deciding the Application. The Court has

only to consider *prima facie* whether he is a proper or necessary party or altogether stranger. In this case, the Petitioner cannot be considered as a stranger. The Petitioner may succeed or may not succeed in assisting the Court to arrive at a proper conclusion that is the question of merit which can be gone into only when the parties will adduce the evidence.

17. Prayer clause (a) of the Chamber Summons reads thus:-

“That the Applicant be joined as a Defendant in the present suit by directing the Plaintiff to carry out necessary amendment in the Plaint in the interest of justice and kindness.”

18. I am inclined to allow the Petition. Hence, following order is passed:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 30th July 2024 passed by the Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai on Chamber Summons No.448 of 2020 is set aside.
- (iii) The Chamber Summons is allowed in terms of prayer clause (a).
- (iv) The Respondent No.1-Plaintiff is directed to join the Petitioner as Defendant No.2 by carrying out necessary amendment within six (6) weeks from today. The

Petitioner-Respondent No.2 is permitted to file Written Statement once the amendment is carried out.

- (v) The Respondent No.1 is directed to inform the Petitioner about carrying out the amendment and no fresh summons will be issued.
- (vi) Even, the Respondent No.1, if he desires, is at liberty to carry out an amendment in the Plaint in view of this development. If, he wants, he can exercise this liberty within eight (8) weeks from today.
- (vii) If, Chamber Summons is moved, trial Court to allow it only on verifying that amendment pertains only to the averments of allowing impleadment of the Petitioner.

19. In view of the above, **Writ Petition stands disposed of.**

[S. M. MODAK, J.]

MHCC040041252020



BOMBAY CITY CIVIL COURT, BORIVALI DIVISION
AT DINDOSHI, GOREGAON, MUMBAI

CHAMBER SUMMONS NO.448 OF 2020
IN
L.C.SUIT NO.516 OF 2020

G. Jaykumar NadarPlaintiff

V/s.

Municipal Corporation of Gr. MumbaiDefendants

And

Dattatray Ramchandra ChavanApplicant

Adv. Ms. Vaishali Bhiungade for Plaintiff.
Adv. Mr. Anand Khairnar for defendant/MCGM.
Adv. Mr. Hemant Ghadigaonkar for applicant.

CORAM: H. H. JUDGE SMT. V. D. INGLE
(Court Room No.07)
DATE : 30th July, 2024

ORAL ORDER

This Chamber summons is taken out by the applicant to join as a defendant in the present suit by directing the plaintiff to carry out necessary amendment in the plaint.

2. Read affidavit in support of Chamber Summons and affidavit in reply filed by the plaintiff.

3. Ld. Counsel for applicant submitted that he is senior citizen and member of Co-operating Housing Society registered under Co-operative Societies Act, 1960 having its office at mentioned address in title. He further submitted that due to unauthorized construction caused by the plaintiff, the applicant has suffered highly prejudice which also caused mental and physical harassment to the applicant. The applicant is residing in the said building which is known as Parle Neel-Gangan Co-operative Housing Society Ltd. Standing on Plot bearing No.232 of TPS Scheme No.5, Village Vile Parle, CTS No.1635 of Feroz Shah Mehta Road, Vile Parle (East), Mumbai -400 057 and member of the society.

4. He further submitted that the plaintiff is the owner and member in respect of Flat No.3 and 4 situated on the ground floor of the said building. The plaintiff by violating the provision of the Bombay Municipal Corporation Act, 1888 carried out the unauthorized construction by amalgamating the Flat No.3 and 4 without the approval of the MCGM and carried out the construction of Orla, measuring 6 x 4 sq.ft. of both the flats, whereby it becomes the part of those flats and also extending the wall in respect of the flat No.4 by almost 20 sq.ft. , which is also against the approved plan of the society. They closed the main door of the flat No.3 by bricks wall and changed the entire plan of the both flats against approved plan. They also encroached on the office premises of the society.

5. He further stated that he applied under the Right to Information Act in respect of unauthorized construction in respect of the said flats. Thereon he filed the complaint on 12.04.2018 by pointing out the aforesaid unauthorized and illegal construction carried out against the approved plan of the said building.

6. He further stated that upon receipt of the aforesaid complaint the defendant through their respective officers caused the notice dated 06.07.2018 under Sec.488 of Mumbai Municipal Corporation Act to the plaintiff. In spite of the issuance of the aforesaid notice, no demolition work was carried out in respect of unauthorized and illegal construction carried out against the approved plan of the building. Thereafter, the applicant through his advocate issued notice to the various departments of the defendant by pointing out the aforesaid unauthorized construction and earlier correspondence dated 12.04.2018 and 17.04.2018 which is ignored by their office. He further submitted that by taking cognizance of aforesaid complaints, the notice under Sec.351 of MMC Act issued against the plaintiff on 17.12.2018 and show cause notice issued whereby called upon the plaintiff to remove/pull down unauthorized change and called upon to restore them to the sanction used. He further stated that in spite of the said complaint, the officers of defendant failed and neglected to take necessary action under the Bombay Municipal Corporation Act against the plaintiff.

7. He further stated that on 24.06.2019 which was the public hearing day of the Corporation, he made the complaint regarding said unauthorized construction. At the time of hearing after considering the grievance of the applicant and on the same, Assistant Commissioner has

passed the remark “ Please take action as per the letter attached to the P. G. form by Dattatray Chavan not then 15 days”. Inspite of that remark made by the Assistant Engineer, Ward office, no action has been taken by the Corporation.

8. He further stated that the applicant by way of the Writ Petition approached the Hon’ble High Court for seeking the appropriate direction against the illegal/unauthorized construction carried out by the plaintiff. As the said Writ Petition came to be disposed of by order dated 09.01.2020 and directed the defendant to hear the concerned parties and take decision on the representation made by the applicant and to take action in accordance with law. Hence, applicant submitted that he may be joined as party defendant in the aforesaid suit and if the present application is dismissed, it will cause great harm and loss to the applicant. Hence, he prayed that Chamber Summons taken out by him be made absolute. Ld. Counsel for applicant in support of his submissions placed reliance on the judgment in the case of **M/s. Dunhill Dome Co-op. Hsg. Society Ltd. Vs. Manuel Mergulhao; 2021 (1) ABR 664.**

9. On the other hand, Ld. Counsel for the plaintiff submitted that the applicant have failed to make out any ground to join them as party to the present suit. The applicants have got no right, title and or interest to interfere in the present suit and if the applicants are aggrieved in any manner whatsoever, the applicants have got independent remedy which the applicants have to exhaust. He further stated that the applicants have got no concern of any nature whatsoever either with him and/or the suit premises. Hence, the applicant is neither necessary nor proper party to the present suit.

Therefore, the question of impleading the applicant in the present suit does not arise at all.

10. He further stated that the plaintiff is owner of flat No.3 and plaintiff's wife is the owner of flat No.4 and the plaintiff had purchased flat No.4 in the year 1985 from the earlier owner i.e. Mayuri Narendra Suratwala. Since 1985 upto 2020 the plaintiff has not carried out addition, alteration in the suit premises. Therefore, the question of amalgamating flat No.3 and 4 does not arise at all. He further stated that the defendant had issued notice only in respect of flat No.4 and not flat No.3. Applicant is neither owner nor society approached before this Court. Plaintiff denied the contention of the applicant that unauthorized structure is adversely affecting the rights of the applicant as he encroached the society property which is common benefit of all the members of the society including the applicant and same is highly prejudice and causing mental agony to the applicant. He further stated that merely because of presence of applicant is held to be helpful in the correct solution of the some of the controversy involved in the suit, applicant cannot be joined as party defendant. Hence, he prayed that Chamber Summons taken out by the applicant be dismissed with cost. In support of his submissions, Ld. Counsel for plaintiff relied upon the judgments in the case of **(i) Ashok Babulal Avasthi Vs. Munna Nizamuddin Khan & Anr. ; 2023 SCC Online Bom 2559** and **(ii) Nimesh J. Patel Vs. M.C.G.M. through Asst. Engineer & Anr. ; 2021 SCC Online Bom 6588.**

11. On perusal of record it appears that the present suit is filed by the plaintiff to declare the impugned notice under Sec.351 of MMC Act, dated 17.12.2018 and the speaking order dated 23.02.2020 are

exfacie, arbitrary, illegal and bad in law. From the record it appears that the applicant has made various complaints regarding alleged unauthorized construction to the various departments of the defendant dated 12.04.2018, 17.04.2018 and 23.10.2018 and the defendant issued notice under Sec.488 of MMC Act, dated 06.07.2018 and thereafter issued notice under Sec.351 of MMC Act, dated 17.12.2018. It also appears that the applicant approached before the Hon'ble High Court vide Writ Petition No.3426 of 2019 in which the Hon'ble High Court passed the order dated 09.01.2020 and the direction was given to the Corporation to hear the concerned parties, consider the representation dated 20.03.2018 filed by the applicant, to dispose of the same within a period of six weeks from today and take action in accordance with law, and the Writ Petition is accordingly disposed of.

12. It also appears that in the affidavit in support of Chamber Summons submitted by the applicant, so also the complaints made by the applicant to the various departments of the defendant, he has not submit any document against the plaintiff to show how he affected due to alleged unauthorized construction of the plaintiff except words. It is also admitted fact that on complaint of applicant against the plaintiff regarding unauthorized construction made him, the defendant has taken action by issuing notices. It does not mean that he is necessary party. So also applicant has totally failed to show that his rights are breached due to unauthorized construction made by the plaintiff. So also he has not filed any document on record to show that he is representing the society on their behalf. I have also gone through the citation submitted by the Ld. Counsel for the applicant but it is not applicable to the case in hand. Hence, considering these facts and

circumstances, Chamber Summons taken out by the applicant is liable to be dismissed. Hence, I proceed to pass the following order.

ORDER

Chamber Summons No.448 of 2020 is dismissed.

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(Smt. V. D. Ingle)

Dt.30.07.2024

Judge,
City Civil Court,
Borivali Div. Dindoshi, Mumbai

Date of dictation	: 30.07.2024
Date of transcription	: 02.08.2024
Date of order signed by HHJ	: 05.08.2024

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE 05.08.2024
AND TIME : 4.50 p.m.

Mrs. Trupti S. Bhogte
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. V. D. Ingle (Court Room No.07)
Date of Pronouncement of Judgment/Order	30.07.2024
Judgment/Order signed by P.O. on	05.08.2024
Judgment/Order uploaded on	05.08.2024