

(1997) 02 BOM CK 0061

In the Bombay High Court

Case No : Civil Revision Application No. 551 of 1996

Madanlal Uttamchand Desarda

APPELLANT

Vs

Jugalkishor Shankarlal Bharuka and Another

RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Mumbai Municipal Corporation Act, 1888 — Section 351

Citation : (1997) 99 BOMLR 748

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Barde, J.—Rule returnable forthwith.

2. The applicant is admittedly the owner of municipal house No. 3-6-17, City Survey No. 6200, situated at Sarafa, Aurangabad, and the respondent No. 1 - Jugalkishor is a tenant in one shop premises on ground floor from this building. The respondent No. 2 Municipal Corporation issued notice dated 13-9-1995 to the respondent No. 1 and called upon the respondent to pull down the unauthorised construction carried out by the respondent No. 1 in the premises which was leased to the respondent No. 1. The respondent No. 1 thereafter filed Regular Civil Suit No. 841/1995 in the Court of Civil Judge (Senior Division), Aurangabad, and at present, the suit is pending in the Court of IXth Joint Civil Judge (Junior Division), Aurangabad. The respondent No. 1 raised various grounds in the suit and prayed for perpetual injunction against the Municipal Corporation, that the Municipal Corporation be prevented from pulling down the portion of the building as mentioned in the notice dated 13-9-1995. The Municipal Corporation has appeared in the said suit. The said suit is pending.

3. The present applicant, the owner of the building, filed an application before the learned Civil Judge, requesting that he being the owner of the property and having direct interest in the property, he be added as party - defendant in the

suit. The present respondent No. 1 - plaintiff from the suit, resisted this application contending that the third party is not at all necessary party to the suit, no relief is sought against the third party, the suit can be decided even without presence of the third party and, therefore, the application be rejected.

4. The learned Civil Judge, after hearing both sides, by his order dated 12.1.1996, rejected the application of the third party. Hence this revision petition.

5. Heard Shri A.S. Bajaj, learned Counsel appearing on behalf of the petitioner; Shri P.F. Patni, learned Counsel appearing on behalf of the respondent No. 1; and Shri H.T. Joshi, learned Counsel appearing on behalf of the respondent No. 2.

6. It appears that basically there is dispute between the landlord and the tenant. A statement is made at the Bar, that the present petitioner has filed a suit against the present respondent No. 1, in the Court of Civil Judge (Senior Division) at Aurangabad, for mandatory injunction that the present respondent - tenant be directed to pull down the unauthorised construction carried out by him in the premises leased to him. That suit is pending. It also appears that the present petitioner is supporting the Municipal Corporation with respect to the contention that the tenant has carried out unauthorised construction in the portion leased to the tenant.

7. The learned Counsel appearing on behalf of the respondent No. 1 has argued that the petitioner wants to support the Municipal Corporation. He being the owner of the property, he would be the best witness for the Municipal Corporation to point out what was the condition of the building prior to the alleged construction and what is the present condition of the building. So, the position of the present petitioner is no more better than that of a witness. In that capacity, he need not be a party to the suit. It is also contended by the learned Counsel appearing on behalf of the respondent No. 1, that the suit between the parties can be disposed of without the presence of the owner. No relief is sought against the owner. So, he is not necessary party to the suit. Therefore, the order passed by the learned Civil Judge is legal and valid and it need not be disturbed.

8. The respondent No. 2 - Municipal Corporation has not opposed the application filed before the Trial Court by the third party, present petitioner and here also, there is no opposition to the revision petition filed by the present petitioner.

9. The learned Counsel for the petitioner has argued that the petitioner is the owner of the property. It is his contention that the unauthorised construction is carried out by the respondent No. 1. He had made a report to the Municipal Corporation regarding the same. In consequence of which the notice is served by the Municipal Corporation on the respondent No. 1. The present respondent No. 1 -tenant has raised objection to the notice and his contention is that only repairs are carried out and there is no unauthorised construction. If any decision is given in this matter, the interest of the present petitioner will be directly affected. When he is the owner of the property, he is the proper party to the proceedings launched by the respondent No. 1.

10. In support of this contention, the learned Counsel for the petitioner has relied upon the decision of the Supreme Court in the case of M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, . The facts appearing in the matter before the Supreme Court and the facts in the present case are similar. There also, the Bombay Municipal Corporation had issued a notice on the tenant regarding the unauthorised construction carried out by the tenant and had proposed for the pulling down the portion of the building where unauthorised construction was carried out and the tenant filed suit for injunction against the Bombay Municipal Corporation. The Apex Court has held that as the landlord has a direct and substantial interest in the demised building before the demolition of which notice u/s 351 of the Municipal Corporation Act was issued, in the event of its demolition, his rights would be materially affected and, in such circumstances, he is the proper party to the suit. It is also observed, that even though no relief is sought against the landlord, he would be proper party to the suit.

11. Considering the ratio laid down by the Supreme Court in the case cited supra, I am of the opinion that in the present case also, petitioner - landlord is a proper party to the suit and he be added as the defendant No. 2.

12. In the result, revision application is allowed. The order passed by the learned IXth Joint Civil Judge (Junior Division), Aurangabad, on 12-1-1996, below Exhibit 15 in Regular Civil Suit No. 841/1995, is set aside. The present petitioner, the third party, who had made the application before the Trial Court, be added as the defendant No. 2 in the suit, and the suit to proceed according to law.

13. Rule absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.