

(2024) 06 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 1697 Of 2023

Sunni Muslim Chota Qabrastan

APPELLANT

Vs

Anisuddin Mohammad Jamil & Anr

RESPONDENT

Date of Decision : 18-06-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order I Rule 10(2)
Mumbai Municipal Corporation Act, 1988 — Section 351, 354A

Citation : (2024) 06 BOM CK 0040

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Dr. Abhinav Chandrachud, Unnati, Asif Shaikh, Ashok R. Pande, Shobhit Shukla, Dr. Dharmesh Vyas, Santosh Parad, Pradeep M. Patil

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J.

1. This Writ Petition takes exception to the judgment and order dated 12.04.2022 passed in Chamber Summons No. 1980 of 2019 by the Bombay City Civil Court, inter alia, rejecting the Application for impleadment of the Petitioner in Long Cause Suit No. 1923 of 2019. Petitioner - Waqf is the owner and landlord of the Suit property described as Shop No. 1 and 1A situated on the ground floor at the corner of Chhota Sonapur, 250, Maulana Shaukatali Road, Mumbai-400 008. According to Petitioner, Respondent no. 1 is its tenant. Respondent No. 1 carried out illegal additions and alterations in the Suit Shop. On complaint filed by Petitioner, Corporation issued statutory Notice under Section 351 Mumbai Municipal Corporation Act, 1888 (for short "MMC Act") to Respondent No. 1. This notice is challenged by Respondent No. 1 in the City Civil Court.

2. Dr. Chandrachud, learned Advocate for Petitioner would contend that the impugned order dated 12.04.2022 rejects the impleadment Application of Petitioner landlord to the Suit on the premise that Plaintiff being dominus litis cannot be forced to add any person as a party to his Suit, inter alia, if no relief is

prayed against such a party. He has drawn my attention to the impugned judgment at page No. 8 of the Writ Petition and on going through the same, it is seen that such findings are returned in paragraph No. 19 by the Trial Court resultantly, dismissing the impleadment Application.

3. He would submit that post the impugned decision, the Division Bench of this Court in the case of Ashok Babulal Avasthi Vs Munna Nizamuddin Khan & Anr. 2023 SCC OnLine Bom 2559 has settled the legal position for impleadment of the landlord to a conflict arising out of issuance of statutory Notice under Sections 351 and 354A to his / its tenant and the said Notice having been challenged in a Civil Suit. He would immediately draw my attention to the above decision and the decision of the Supreme Court dated 12.02.2024 upholding the above decision in Special Leave Petition (C) No. 3374 of 2024. He would therefore contend that the impugned judgment is contrary to settled legal position and deserves to be set aside, resultantly, impleading the Writ Petitioner as a party to the Long Cause Suit No. 1923 of 2019.

4. PER CONTRA, Mr. Pande, learned Advocate appearing on behalf of contesting Respondent No. 1 has attempted to distinguish the decision of the Division Bench in the case of Ashok Babulal Avasthi (supra) and would contend that impleadment of the landlord cannot be accepted as an absolute proposition in the conflict between the tenant and the Corporation. On being asked on his opinion on the decision of the Division Bench in the case of Ashok Babulal Avasthi (supra) and subsequently it being upheld by the Supreme Court, he would still persist with his submissions and objections and urge the Court to hear the same on the ground that the said decisions are per incuriam. According to him the essence and ethos of O. I, R. 10(2) has not been put forth correctly and considered by the Division Bench.

5. In the present case he has raised two specific objections; firstly he would contend that the Respondent No. 1 - Tenant did not accept the Petitioner as landlord. He would submit that the rent receipt issued to the Respondent No. 1 is by the landlord bearing the name 'Sunni Muslim Chhota Kabrastan Trust' and not by the Petitioner in whose name the word 'Kabrastan' begins with letter "Q". He would submit that in 2019, Petitioner filed the Suit in the Small Causes Court which was dismissed holding that the Suit property is not Waqf property. He would further submit that the Trustee of the Petitioner applied for restructuring and filed Change Report which was rejected by the Waqf Board and against which the Trust filed a Civil Revision Application (Stamp) No. 180 of 2020 in this Court, which is pending.

6. Before I advert to the second submission advanced by Mr. Pande, it would be appropriate to deal with the above submission here itself. It is seen that there is a Tenancy Agreement which is placed on record by the Petitioner dated 26.06.2002, wherein the Respondent No. 1 is the tenant and the landlord is the Petitioner. This is not denied by Respondent No. 1. The dichotomy expressed by Mr. Pande is that name of the Petitioner appearing in the Tenancy Agreement is

different, since the word 'Kabrastan' begins with the letter "K". Such a submission is not acceptable and cannot be countenanced and considered. Admittedly, Respondent No. 1 - Tenant is the tenant of the Petitioner and there is no dispute about the same and also regular rent receipts have been issued by Petitioner to Respondent No. 1.

Relationship between Petitioner and Tenant as seen from the pleadings is undisputed and it is not denied by the Tenant and therefore the aforementioned first submission made by Mr. Pande is unsustainable. It is a defence merely taken to object impleadment in view of the existing Tenancy Agreement and rent receipts for the Suit Shops issued by Petitioner. Hence, the first submission of the Respondent No. 1 stands expressly rejected.

7. The second submission advanced by Mr. Pande is on the interpretation of Order I Rule 10 (2) of the Code of Civil Procedure, 1908 (for short "CPC"). He would submit that presence of the landlord before the Trial Court is not at all necessary. In the present case before the Trial Court, since the aforesaid provision contains the word 'may' which enables the Court to add or strike out a party to the proceedings, he would submit that in view of this position, the judgment of the Division Bench in the case of Ashok Babulal Avasthi (supra) is per incuriam and the Division Bench of this Court has not dwelt upon or dealt with the aspect of presence of the landlord in such a matter before the Trial Court.

8. He would submit that in the Notice of Motion filed for impleadment, Writ Petitioner has not stated as to why and how his presence is necessary before the Trial Court to deal with the Suit proceedings. He would submit that this Court should therefore read the decision of the Division Bench in the case of Ashok Babulal Avasthi (supra) and distinguish the same. He would submit that in the present case, Show-Cause-Notice has been issued by the Designated Officer to Respondent No. 1 - Tenant, hearing on the Show-Cause-Notice has been conducted by the Designated Officer and the order is passed by the Designated Officer for removal of structure / additions which is the subject matter of the Suit. He would vehemently submit that despite Notice being issued to the Petitioner - landlord, the Petitioner -landlord did not participate in the proceedings before the Designated Officer. In view of this, he would submit that Petitioner is dis-entitled to now seek impleadment in the Suit proceedings filed to challenge the order of the Designated Officer. He would go to the extent of arguing that the reasons given in the order of the Designated Officer are illegal. But that is on merits.

9. He would submit that the challenge to the order in the Suit is on the ground that the said order of the Designated Officer is without jurisdiction and to establish this challenge, the presence of the landlord is not necessary at all.

10. In support of his above propositions, Mr. Pande has referred to and relied upon the decision of the Supreme Court in the cases of East Coast Railway & Anr.

Vs. Mahadev Appa Rao & Ors. Civil Appeal No. 4964 of 2010, decided on 07.07.2010. and G. J. Kanga and Ors. Vs. S.S. Basha MANU/MH/0518/1992. He would contend that the order of demolition passed under Section 351 of the MMC Act is a quasi-judicial order and entails drastic civil consequences. He would submit that in this case, the consequences would be faced by Respondent No. 1 - Tenant and therefore it is the Respondent No.1 who would have to meet the Corporation's case in Trial. He is of the opinion that in view of the above decisions, presence of the landlord is not at all necessary since the landlord virtually has no nexus with the issue decided in the order of the Designated Officer. He would urge the Court to therefore refer the matter to a Larger Bench on the above indistinction pointed out by him

11. This second submission made by Mr. Pande on the provisions of Order I Rule 10 (2) of the CPC deserves to be dismissed in limine. The Division Bench of this Court in paragraph Nos. 9 to 14 of its decision in the case of Ashok Babulal Avasthi (supra) has in extensor dealt with the said provision and power of the Court to add or delete any party whose presence would be required to settle all questions involved in the case before a Court and also the power to be exercised by the Court suo moto or by the party to the Suit. In this decision, the Division Bench clearly rules that the basic principle is that the Plaintiff is a dominus litis and cannot be compelled to join someone not involved in the Plaint but the said principle is not an absolute principle. The Division Bench has expounded the concept of the necessary party whose absence would prevail an effective decree. It has also expounded the concept of proper party while considering the ambit of Order I Rule 10 (2) of the CPC while holding that the situation contemplated in the above provisions can arise in various circumstances.

12. It is seen that the Division Bench has thereafter referred to various decisions of this Court and the Supreme Court in paragraph Nos. 15 to 32 of the said decision. After considering the decisions in a plethora of cases in absolute detail, the Division Bench has drawn a distinction that the pivotal issue for consideration is not whether the landlord is the necessary party in the Tenant's Suit against the Corporation but whether the Trial Court is empowered to implead the landlord under Order I Rule 10 (2) of the CPC as a proper party, the findings returned by the Division Bench in the above decision have been elucidated in paragraph Nos. 35 to 38 which are reproduced herein below for immediate reference:-

"35. While discretion inherently implies flexibility and adaptability, a level of predictability emerges if discretion is used in a particular manner, guided by specific considerations. Advocates and litigants then anticipate a particular approach by the court in similar cases. This can offer stability and clarity in how certain matters are handled within the legal system, providing a framework for litigants to understand how the court will likely exercise its discretion in specific circumstances.

36. There is a rationale to the consistent exercise of judicial discretion under Order 1 Rule 10(2) of CPC in allowing the landlord's application for joinder in a

tenant's suit in respect of demolition action of the Corporation treating the landlord as a proper party. That is because the impact of a notice for demolition issued by the Corporation extends beyond the tenant to fundamentally affect the property itself. It cannot be said that as a true owner of the property, the landlord holds no interest in any legal dispute regarding authorized or unauthorized construction. The intended action of demolition directly affects the owner of the property or the structure, who has a legitimate entitlement to maintain the identity of the property and integrity, safeguarding it from potential damage. The property occupied by the tenant ultimately belongs to the landlord. The tenant possesses only a derivative title through a lease or license, while the landlord retains full ownership and all reversionary rights upon the lease or license termination. Secondly, the proposed demolition by the Corporation may entail legal entry onto the property to deal with the alleged unauthorized construction. Notices issued by the corporation direct its employees and agents to enter the premises to remove the disputed construction. If the Corporation exercises its legal authority to enter the premises, it would essentially be entering upon the property owned by the landlord. Given these factors, the landlord's legitimate concerns and interests cannot be overlooked or undermined. Thus, if the landlord seeks a joinder, it is appropriate for a proper party to be joined for a comprehensive and equitable resolution of the suit.

37. Therefore, to conclude, it is clear that the decision of the Hon'ble Supreme Court in Mohamed Hussain Shariffi has not deviated from the law laid down in Aliji Momonji, and there is no conflict between these two decisions. The view taken by the learned Single Judge in Deju Salian to the contrary is not correct. The decision of the Single Judge in Nimesh Patel correctly interpreted the decisions of the Supreme Court as having no conflict and followed the decision in Aliji Momonji, and the same is approved.

38. Answering the question, we hold that in a suit filed by the occupier/tenant/licensee seeking to restrain the local authority from taking action of demolition against the property, where the landlord/owner of the property seeks impleadment, the Court is empowered to permit the same exercising the power under Order I Rule 10(2) of Code of Civil Procedure on the premise that the landlord/owner is a proper party. Such a direction by the court in this fact situation would be a sound exercise of discretion consistent with the long-standing use of discretion in this manner. Refusal to permit such a joinder by not accepting the landlord/owner as a proper party would be an improper use of discretion and be liable to be set aside."

13. It is seen that the said judgment has also been upheld by the Supreme Court where it has declined to interfere in the matter. In view of the above settled position in law, the submissions advanced by Mr. Pande cannot be countenanced or considered since there is an absolute and complete determination of the same as aforesaid. The second leg of the submission regarding the challenge to the Designated Officer's order in my opinion is an irrelevant submission. Non-

participation of landlord before the Designated Officer cannot be a ground for his non impleadment. In fact, in the present case it is seen and also borne out from the record that the landlord i.e. Writ Petitioner before me is the original Complainant.

14. On perusal of the Notice issued under Section 354A of the MMC Act at page Nos. 232 and 233 of the Writ Petition to Respondent No. 1, it would clearly show that substantial unauthorized addition and alteration work has been carried out, there is also conversion of loft into a mezzanine floor along with conversion of the slanting roof to a flat high roof as also other encroachments. The property admittedly belongs to Writ Petitioner - landlord which is a registered Waqf and the Respondent No. 1 is the tenant of the landlord which is evident from the RAE Suit filed by the landlord in the year 2019 against Respondent No. 1. Reference to that Suit has been made in the submissions by Mr. Pande. Hence, if Respondent No. 1 does not recognize and accept the Writ Petitioner - Trust as the landlord then it ought not to have defended the said Suit and taken up a similar defence therein. It is seen that on 28.01.2019, the Respondent No. 1 by written Application made to the Petitioner dated 28.01.2019, sought NOC for tenant-able repairs and he himself has enclosed rent receipt of the Suit Shop wherein the word 'Kabrastan' begins with the letter "K". In the Application addressed to Petitioner by Respondent No.1, he himself spells the name of Petitioner by the word 'Kabrastan' beginning with letter "K". This letter and rent receipt is appended at page Nos. 225 and 226 of Writ Petition. This virtually proves that the first submission advanced by Mr. Pande was sham and bogus and merely to play to the gallery.

15. In view of the above, the impugned order is unsustainable. The impugned order as observed has been passed prior to the Division Bench's judgment. The reasons given in paragraph No. 19 of the impugned order that the Plaintiff being dominus litis cannot be forced to add any person as a party unless there is a relief claimed against the party, now stands settled by the decision of the Division Bench in Ashok Babulal Avasthi (supra) and I cannot take a different view therefrom.

16. Before I part with the Writ Petition, there is one more submission made by Mr. Pande which I would like to advert to. I must record that this Court has given substantial time to Mr. Pande to put forth his propositions and submissions. Mr. Pande has argued for more than 35 minutes despite which he relentlessly and repeated stated that this Court should not ask the party/parties/advocates to curb their submissions or the Court would levy costs. In the first place, I do not understand as to why such a submission is made by Mr. Pande. As noted above, I made it clear to Mr. Pande while he was arguing his submissions that he should bear in mind the amount of judicial time he was consuming for arguing or putting forth his submissions in the present case, since it impinged upon precious judicial time. I had also made it clear to Mr. Pande that none of his submissions were infact relevant and appropriate and therefore he should bear in mind that if the

Court would not accept his case, he would be saddled with costs ultimately. However, Mr. Pande has made a contradictory submission that the Court should not threaten the party or Advocate with costs in order to curb his arguments and submissions. In the present case, this Court has on three specific occasions during the making of his submissions clearly informed Mr. Pande that he was free to argue and make his submissions.

17. In the present case, substantial precious judicial time has been consumed by Mr. Pande for making submissions which in my opinion are completely frivolous. I record that the submissions made by Mr. Pande were merely to play to the gallery and nothing more. Once the law is settled by virtue of the decision of the Division Bench, Mr. Pande would repeatedly insist that I refer the matter to a Larger Bench or make a reference to the Hon'ble the Chief Justice of this Court. When a question was asked to Mr. Pande as to how a sitting Single Judge would be in the position to make such a reference in the facts of this case, he would have no answer to the same. The submission of not accepting the Petitioner as Landlord is also a false submission made by him in view of Respondent No. 1's own letter at page No. 226 and the rent receipt at page No. 225 of the Petition, which have come from his custody. In view of the fact, that substantial judicial time was consumed in making such frivolous submissions which are noted and dismissed by me, I am inclined to levy exemplary costs on Respondent No. 1 of Rs. 25,000/- to be paid by Respondent No. 1 to the Kirtikar Law Library, High Court, Mumbai. The costs shall be paid within a period of two weeks from the date of uploading of this judgment.

18. After the operative order is pronounced in Court, Mr. Pande made an Application for stay of the order to enable the Respondent No.1 to approach the Superior Court. The application made by Mr. Pande is rejected for the reasons recorded in this judgment. Resultantly, the impugned order dated 12.04.2022 stands quashed and set aside. Chamber Summons No. 1980 of 2019 stands allowed. Plaintiff before the Trial Court is directed to implead the Writ Petitioner as Defendant No. 2 and carry out amendment within a period of two weeks from the date of uploading of this judgment.

19. Defendant No. 2 / Petitioner shall be entitled to file his Written Statement, which shall be filed within a period of two weeks from the date of uploading of this judgment and the Learned Trial Court shall take the same on record. The Suit shall thereafter be proceeded on its own merits and strictly in accordance with law.

20. All contentions of the Writ Petitioner and Respondent No. 1 / Plaintiff are expressly kept open.

21. With the above directions, Writ Petition No. 1697 of 2023 stands allowed and disposed.