

**IN THE CITY CIVIL COURT AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
CHAMBER SUMMONS NO.409 OF 2015
IN
S.C. SUIT NO.1981 OF 2014**

Chandrakant B. Gupta	..Plaintiff
Vs.	
M/s. Truly Creative Developers Pvt.Ltd.	..Defendant
And	
S.D. Corporation Pvt.Ltd.	..Applicant.
 Mr.Ghag, Advocate for Applicant.	
Mr.Dubey, Advocate for Plaintiff.	

**Coram : His Honour Judge
Shri P. C. Bavaskar
(Court Room No.1)
Date : 6th October, 2015**

ORDER ON CHAMBER SUMMONS

1. The applicant S.D. Corporation Pvt.Ltd. has taken out this Chamber Summons for joining them as a party defendant.
2. Perused affidavit, reply and documents. Heard learned Advocates for both sides.
3. Mr.Ghag the learned Advocate for applicant submitted that MHADA had constructed 160 buildings and allotted tenements to the eligible applicants. The occupants have formed near about 60 societies, out of which 55 have formed Federation of Housing Societies namely Samta Nagar CHS Union Ltd. The members of the societies have passed resolution for redevelopment of the buildings. Pursuant to that there was agreement for redevelopment between Federal Society and the defendant.

Later on it was revealed that the defendant has carried out unauthorised construction and committed breach of the terms and conditions of the development agreement and therefore, the Federal Society vide notice dt.9.1.2007 terminated the development agreement and appointed applicant as a developer and accordingly the applicant is developing the property and therefore the applicant is necessary and property party. The plaintiffs in collusion with defendant have filed this suit and they are likely to settle the dispute with intent to defeat the claim of applicant. He relied on the decision in **Prem Kaliaandas Daryanani Vs. Natvarlal C. Modi & Ors., 2015(4), Bom.C.R., 309.**

4. Per contra, Mr.Dubey the learned Advocate for plaintiffs submitted that the development agreement is between Federal Society and the defendant and the applicant is not a party to the development agreement and therefore applicant is not necessary and proper party. The plaintiffs have filed this suit for possession of suit property, with consequential relief of perpetual injunction. The plaintiffs directly or indirectly have not sought any relief against the applicant and therefore the applicant is not necessary and proper party and the Chamber Summons deserves to be dismissed. He relied on the decision in **Bharat Karsondas Thakkar Vs. Kiran Construction Co. & Ors., AIR 2008, SC, 2134** and **Kasturi Vs. Iyyamperumal & Ors., AIR 2005, SC, 2813.**

5. The broad principles which should governed impleadment of the party as a defendant are as follows:-

- (1) The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been

joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

(2) A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

(3) A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

(4) If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

(5) In a suit for specific performance, the court can order impleadment of a subsequent purchaser who took the conveyance with knowledge and notice of the suit Contract as proper party before the Court so as to decide the limited issue as to enforceability of the agreement to sell.

Bearing in mind the aforesaid principles, let us see whether the applicant is necessary and proper party to this suit.

6. It is an admitted fact that the defendant was appointed as a developer for development of the building constructed by MHADA by the Federal Society viz. Samta Nagar Co-operative Housing Society Union Ltd. Further it is admitted that there was development agreement between Federal Society and the defendant on 31.01.1998. The applicant has placed on record copies of certain documents. It is seen that the Federation

of Society has passed resolution on 7.1.2007 and thereby terminated the development agreement executed in favour of defendant. On the very day the Federation of Society has passed another resolution and appointed applicant as a developer. The defendant has filed Suit No.1267/2009 against Samata Nagar Co-operative Housing Society Union Ltd. and taken out Notice of Motion No.1948/2009 for ad-interim relief. The Hon'ble High Court was pleased to refuse the ad-interim relief. After termination of development agreement the Federation of society has appointed applicant as a developer and the applicant has deposited the entire premium with MHADA. The necessary permissions are also obtained from Forest Department, Collector and Municipal Corporation. The applicant is a new developer developing the property and therefore the applicant is necessary and proper party to this suit. Hence, the order:-

ORDER

1. Chamber Summons No.409/2015 is made absolute in terms of prayer clause (a).
2. Plaintiff to carry out proposed amendment within 14 days from today.
3. Copy of amended plaint be supplied to other side.
4. Costs in main cause.

(P. C. Bavaskar)

Judge,
City Civil Court,
Dindoshi, Mumbai.

6th October, 2015

Dictated on : 06/10/2015
Transcribed on : 07/10/2015
Checked & Signed by HHJ : 09/10/2015

“ I affirm that the contents of this PDF file judgment are the same,
word to word, as per the original judgment.”

Name of Steno with post :-Sandeep Maruti Bandekar, S.G. Stenographer

Name of the Judge:- HHJ Shri P.C. Bavaskar (C.R.No.1)

Date of pronouncement of judgment:-06/10/2015

Judgment signed by the P.O. On:-09/2015

Judgment uploaded on:-16/10/2015