

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1033 OF 2015

Papeyon Developers Pvt. Ltd. .. Petitioners  
vs.  
Mrs. Susan R. Battiwala and ors. .. Respondents

Mr. Prasad Dani, Sr. Advocate a/w. Mr. D.V. Deokar, Mr. Pinakin Modi i/b. Parimal K. Shroff & Co. for Petitioners.  
Mr. Mustafa Doctor, Sr. Advocate and Mr. Jehangir Jejeebhoy, Ms. Viloma Shah, Mr. Dhiren D. i/b. M/s. Hariani & Co. for Respondent No.5.

**CORAM : M. S. SONAK, J.**  
**DATE : 31 JULY 2015.**

**P.C. :-**

- 1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
  
- 2] The challenge in this petition is to the order dated 17 December 2014, by which the learned Small Causes Court at Mumbai has permitted the impleadment of respondent No.5 in the suit instituted by the petitioners seeking eviction of respondent Nos.1 to 4.
  
- 3] The entire reasoning for permitting the impleadment is contained in paragraph 11 of the impugned order, which reads thus:  
  
*“11. Considered the submission of Learned advocate of applicant, plaintiff and defendants. I have gone through the*

*cited case laws. Prima facie it appears that the applicant is having 1/5<sup>th</sup> share in the suit property including suit premises and having legal right as such applicant is necessary party to the suit. If, applicant is added as a defendant No.5 to the suit, no prejudice will be caused to the plaintiff. More over in view of the Order 1 Rule (3)(7)(10)(2) of the Code of Civil Procedure for complete and effective adjudication of the subject matter of the suit applicant is necessary party to the suit. The point No.1 is answered in the affirmative. “*

4] The various contentions raised by both the parties do not appear to have been dealt with at all. In particular, it is necessary that the Trial Court decides as to whether the respondent No.5 is a necessary party in the suit. Besides, there are already suits instituted by both the petitioners as well as respondent No. 5 concerning their respective claim to the suit property, which are pending adjudication. The suit in which, respondent No.5 has applied for impleadment is basically seeks eviction of the tenants from out of the suit premises.

5] Accordingly, it would be appropriate if the impugned order is set aside and the matter is remanded to the Small Causes Court for fresh consideration of the application at Exhibit-27.

6] Accordingly, the impugned order dated 17 December 2014 is set aside. The Small Causes Court is directed to reconsider the application at Exhibit-27, in accordance with law and after taking into consideration the rights and contentions of the both the parties. It is further made clear that this Court has not expressed any opinion on the merits of the case, and therefore, it will be open to the Small Causes Court to decide the application at Exhibit-27, in accordance with law and on its own merits.

7] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

**(M. S. SONAK, J.)**

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