

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 4016 OF 2015

Anant V. Athani and ors.

.. Petitioners

vs.

Baburao S. Kale and ors.

.. Respondents

Mr. R.S. Apte, Senior Advocate i/b Mr. Vikas Mahanagare and Ms Sonali Kunekar for the Petitioners.

Mr. R.D. Soni a/w. V. R. Kasale for Respondent No.1.

Mr. Rahul Motkari for Respondent Nos. 7 to 10.

Mr. Chandrakant Donde, brother of Respondent No.6, present in Court.

CORAM : M. S. SONAK, J.

DATE : 28 April, 2015.

P.C. :-

1] This petition challenges the order dated 28 October 2014 by which the District Judge-3, Nashik has dismissed the petitioners' application at Exhibit-122 for being impleaded as party respondents in Civil Appeal No. 235 of 2001.

2] Civil Appeal No. 235 of 2001 came to be instituted by respondent No.1 (appellant) against the judgment and decree dated 9 April 2001 made in Regular Civil Suit No. 992 of 1980, by which, the relief for specific performance was declined. The appeal Court made an interim order restraining alienation of the suit property pending the appeal. However, in the year 2004, by means of registered Deed, the portion of suit property ad-measuring 1 Hectare

99 R was sold by the original vendors to the petitioners. It is the case of the petitioners that in the year 2005, when they applied for mutation in revenue record, they acquired knowledge of the pending proceedings in Civil Appeal No. 235 of 2001. It is also the case of the petitioners that they did not seek impleadment earlier, as they expected the respondents in the appeal, i.e., the original vendors to defend the impugned judgment and decree dated 9 April 2001. However, since some of the respondents, including in particular respondent No.3, 4A and 4B filed some consent terms in the appeal, the petitioners applied for impleadment by way of Exhibit-122.

3] By the impugned order dated 28 October 2014, the learned District Judge has rejected the application seeking impleadment. Hence, the present petition.

4] Mr. Apte, learned Senior Advocate appearing for the petitioners, placed reliance upon the decision of the Apex Court in case of *Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and ors – (2013) 5 SCC 397*, and submitted that a transferee/purchaser *pendente lite* can be impleaded as a party to a suit for specific performance. Mr. Apte submitted that in the

present case, it is apparent that the respondents, i.e., the original vendors having right to the suit property to the extent of 80% are colluding with the appellant in the civil appeal and if this is permitted, the interest which the petitioners have acquired in a portion of suit property, will be affected. Mr. Apte submitted that the petitioners, in such circumstance, are necessary parties and the impugned order, to the extent it declined impleadment, is required to be interfered with.

5] Mr. Soni, learned counsel for respondent No.1, submitted that the suit for specific performance was instituted in the year 1980 and the same was decreed in the year 2001. Despite injunction, the petitioners have purported to purchase the portion of the suit property. Further despite knowledge of pendency of these proceedings, the petitioners did not apply for impleadment. Besides, the petitioners seek to raise certain independent pleas, which if permitted, would embarrass the proceedings in a suit for specific performance. Relying upon the decision of the Hon'ble Supreme Court in case of *Vidhur Impex and Traders Pvt. Ltd. and ors. Vs. Tosh Apartments Pvt. Ltd. & ors.* - AIR 2012 SC 2925(1), Mr. Soni submitted that only a purchaser whose conduct is above-board and

who applies for impleadment within a reasonable time of his acquiring knowledge of pending litigation, may be impleaded. For all these reasons, Mr. Soni submitted that the impugned order may not be interfered with.

6] Having heard the learned counsel for the parties and perused the records, in my judgment, in the peculiar facts and circumstances of the present case, there is no case made out to interfere with the impugned order. As noted earlier, the suit for specific performance was instituted in the year 1980 and the same was decreed in the year 2001. In the same year, the appeal Court granted interim relief restraining the original vendors from creating any third party rights in the suit property. Despite the same, it appears that the original vendors have sold a portion of suit property in the year 2004 to the petitioners. The sale is clearly *pendente lite*.

7] It is the case of the petitioners that they have acquired knowledge of pending litigation some time in the year 2005. There is no valid explanation as to why the impleadment was not sought for within a reasonable time from the date of acquisition of such knowledge. In case of *Vidhur Impex and Traders Pvt. Ltd. (supra)*, the

Supreme Court has laid down the broad principles which should govern disposal of applications seeking amendment. One of the principles is that the purchaser who seeks impleadment should be one, whose conduct is above-board and further the application for joinder should be made within reasonable time of his acquiring knowledge about the pending litigation. In the present case, the explanation offered by the petitioners is hardly inspiring. There is really no proper explanation as to why for a period of over almost six years from the date of acquiring knowledge about pending proceedings, the petitioners did not seek impleadment in the pending appeal.

8] The records further indicates that although some of the respondents did file some consent terms seeking to compromise the matter with the original appellant, such consent terms were not accepted by the Court, in the sense, no consent decree has been made on the basis thereof as yet. Besides, admittedly, there are some other respondents in the appeal, who have declined to compromise the matter, which has since been argued on its merits. In fact, the application seeking impleadment was made at a stage when final

arguments had commenced and the appeal was on the verge of disposal.

9] Further, in the application seeking impleadment, it is the case of the petitioners that they were unaware of the pending litigation or the interim orders made therein. In this sense, the petitioners virtually seek to raise defence as contemplated by Section 19 of the Specific Relief Act, 1963. In case of *Thomson Press (India) Limited (supra)*, upon which reliance was placed by Mr. Apte, the Supreme Court was clarified that a *pendente lite* purchaser, even after impleadment, shall be permitted to take only such defences which are available to the vendors, as such purchaser derives title from the vendor on the basis of purchase of the suit property subsequent to agreement of sale with the original plaintiff and during the pendency of the suit. Therefore, to permit the impleadment of the petitioners, at this stage, who has already indicated a defence, which the original vendors will obviously not be permitted to raise, the very conduct of the appeal proceedings would be embarrassed.

10] That apart, the dismissal of the application at Exhibit-122, is obviously not a bar to the petitioners instituting an independent

proceedings to safeguard rights, if any, which he may possess in respect of any portion of the suit property. Accordingly, no serious prejudice can be said to have been occasioned the petitioners by making of the impugned order.

11] The exercise of powers under Order 1 Rule 10 of the CPC does not really go to the root of jurisdiction of the Civil Court or the appeal Court. The exercise sounds more properly in the arena of discretion. In the facts and circumstances of the present case, indicated earlier, it cannot be said that the appeal Court has exercised the discretion contrary to the principles of law or in an arbitrary manner.

12] In view of above, there is no reason to interfere with the impugned order. Accordingly, petition is dismissed. There shall be no order as to costs.

13] It is made clear that neither the impugned order, nor the present order shall come in the way of the petitioners instituting an appropriate independent proceeding for safeguarding their rights, if any, in respect of portion of the suit property.

(M. S. SONAK, J.)