

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4113 OF 2015

M/s. Hermes Developers & Anr.

..Petitioners

Vs.

Vispi Burjor Mistry & Ors.

..Respondents

Mr. Vivek Kantawala a/w Ms Bhairavi Waravdekar and Mr. Amey Patil i/b Vivek Kantawala & Co. for the Petitioners

Mr. Venkatesh Shashtrty for the Respondent No.1

**CORAM : R.M.SAVANT, J
DATE : 5th October 2015**

PC. :

1 The above Petition take exception to two orders i.e. the order passed on Exhibit 77 dated 15-12-2014 whereby the application filed by the Plaintiff i.e. the Respondent No.1 herein for impleading one Thakkar Investment and Finance Company as a party Defendant to the Suit, came to be allowed. The Petitioner also challenges the order dated 15-12-2014 passed on Exhibit 81 by which order the application filed by the Plaintiff came to be allowed and resultantly one Mathuradas Nanji Thakkar was allowed to be impleaded as party Defendant to the Suit.

2 The Learned Counsel appearing for the Respondent No.1 raises two contentions. Firstly the Learned Counsel contends that in so far as Exhibit

81 is concerned, he seeks leave to withdraw the said application Exhibit 81. The said application is accordingly allowed to be withdrawn. In view of the said withdrawal, the challenge to the order passed thereon does not survive. The impleadment of the said Mathuradas Nanji Thakkar would accordingly stand set aside.

3 In so far as Exhibit 77 is concerned, the Learned Counsel for the Respondent No.1 questions the locus standi of the Petitioners to challenge the said order on the ground that the Petitioners are the co-Defendants and cannot challenge the order directing the impleadment of some other party as a Defendant.

4 In my view there is a merit in the said contentions of the Learned Counsel for the Respondent No.1. Hence no case for interference in so far as the said order dated 15-12-2014 passed on Exhibit 77 at the behest of the Petitioners is concerned. The above Writ Petition is accordingly dismissed.

5 However, it is clarified that it would be open for the newly added Defendant i.e. Thakkar Investment and Finance Company to challenge the said order and if any challenge is raised, the same would undoubtedly be considered on its own merits and in accordance with law.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order