

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

WRIT PETITION NO.5339 OF 2014

Sou. Sunita Chandrakant Jagtap : Petitioner
versus
Chandrakant Bhiku Jagtap and anr. : Respondents.

Mr. Rahul S Kadam for the Petitioner
Mr. Balasaheb R Deshmukh for the Respondent No.1.
Mr. Rahul S Bhatnase for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 15th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 18/10/2013 passed by the learned Joint Civil Judge, Junior Division, Indapur by which order the Application (Exhibit 100) filed by the Petitioner for her impleadment as Plaintiff came to be rejected.

2 The suit in question being Regular Civil Suit No.259 of 1994 has been filed by the Petitioner herein as a guardian of her son Kishor Chandrakant Jagtap who at the relevant time was a minor. The suit has proceeded to trial. The Plaintiff has closed his evidence on 19/9/2009. Thereafter the Defendant has closed his evidence on 21/3/2013, and the Roznama of the suit discloses that the final arguments were heard on 1/8/2013 and the suit was kept for judgment. It appears that on 13/8/2013, when the suit was listed, the instant Application (Exhibit 100) came to be filed for impleadment of the Petitioner as

Plaintiff No.2 to the suit. As indicated above, the Petitioner had filed the suit as a guardian of her minor son Kishor.

3 The said Application (Exhibit 100) was opposed to on behalf of the Defendant i.e. the father of Kishor on the ground that the Application is belated by 19 years and that allowing the Application would result in a claim which is barred by limitation being entertained.

4 The Trial Court has considered the said Application (Exhibit 100) and as indicated above has by the impugned order dated 18/10/2013 rejected the same. The rejection is on the ground that despite the knowledge of proceedings, the application has been filed after a period 19 years. The Trial Court has also observed that whether a party is a necessary party or not cannot be determined in the second phase but has to be determined initially. The fact that the Application has been filed after the suit was kept for judgment cannot be disputed in the light of the roznama.

5 The learned counsel appearing for the Respondent Shri Deshmukh in support of the impugned order has relied upon the judgment of the Apex court in (2010) 4 Bom CR (SC) 638 in the matter of Mumbai International Airport Pvt. Ltd. v/s. Regency Convention Centre & Hotels Pvt. Ltd. wherein the Apex Court has laid down certain guidelines to be applied whilst

considering an application under Order I of Rule 10(2) of the Code of Civil Procedure. The Apex Court has observed that if the claim against a person is barred by limitation, it may refuse to add him as a party or even dismiss the suit for non-joinder of a necessary party. The next judgment relied upon by the learned counsel for the Respondent is the judgment of the Apex Court reported in AIR 1964 SC 993 in the matter of Arjun Singh v/s. Mohindra Kumar and others wherein the Apex Court has held that once the suit is kept for judgment then the Trial Court cannot entertain any application and that there is no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order IX Rule 7. The Apex Court has therefore held that no application can be entertained after the matter is kept for judgment.

6 Having regard to the reasons mentioned in the impugned order and also having regard to the judgments (supra), the impugned order passed by the Trial Court does not merit any interference. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]