

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO. 17606 OF 2015**

Zahid Burhan Nagdawale

..Petitioner

Vs.

M/s. International Engineering Works & Ors

..Respondents

Mr. S. R. Ganoo i/b M/s Vinod Mistry & Co. for the Petitioner

Mr. T. R. Moghal for the Respondent Nos.1 to 4(d)

CORAM : R. M. SAVANT, J.

DATE : 21st OCTOBER, 2015

ORAL ORDER

1 At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent Nos.5 to 25 as in the context of the challenge raised in the above Petition they are only formal parties. The said Respondents are accordingly allowed to be deleted. Amendment to be carried out during the course of the week.

2 Rule. Considering the challenge raised in the above Petition made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against two orders dated 17-2-2015 and 2-3-2015. By the first order i.e. the order dated 17-2-2015, the Chamber Summons No.2726 of 2013 filed by the Respondent Nos.1

to 4(d) herein came to be allowed and the Petitioner herein was permitted to be impleaded as a Defendant to the Suit and is therefore now the Defendant No.21 to the Suit. The second order is the order dated 2-3-2015 passed rejecting the Notice of Motion filed by the Petitioner in as much as the Trial Court has rejected the permission to register the draft Notice of Motion. The said draft Notice of Motion was sought to be filed seeking setting aside of the order dated 17-2-2015 on the ground that the said order was passed without hearing the Petitioner. The Trial Court has whilst refusing permission to register the draft Notice of Motion has made some observations on the merits as regards the Petitioner's entitlement for setting aside the said order dated 17-2-2015.

4 In my view, the Trial Court has misdirected itself by making the said observations whilst refusing permission to the Petitioner to register the Notice of Motion. The Trial Court ought to have permitted the registration of the said Notice of Motion and thereafter decided it one way or the other as it deems appropriate. In my view therefore, the impugned order dated 17-2-2015 is required to be quashed and set aside and is accordingly quashed and set aside. The following directions are issued:

(i) The Petitioner is granted leave to register the Notice of Motion and on such registration, the Trial Court would decide the Notice of Motion on merits by

giving proper opportunity to the parties.

(ii) The Learned Counsel for the Petitioner states that the Suit is to come up before the Trial Court on 18-11-2015. It is on the said day that the Notice of Motion that is now directed to be registered by this Court would be heard by the Trial Court on merits. The Respondent Nos.1 to 4(d) may file their affidavit in reply to the said Notice of Motion and serve the same on or before 16-11-2015.

(iii) Needless to state that the challenge to the order dated 17-2-2015 is kept open.

(v) Needless also to state that the contentions of the parties are kept open for being urged before the Trial Court.

5 The Petition is allowed to the aforesaid extent. Rule is made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]