

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9899 OF 2014**

Maharashtra Jeevan Pradhikaran and another .. Petitioners

Versus

M/s. C. R. Constructions and others .. Respondents

Mr. A. R. Pitale, for the Petitioners.

Mr. P. D. Pise, for the Respondent Nos.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 28th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 07.04.2014 passed by the Learned 2nd Joint Civil Judge, Senior Division, Sangli, by which order the application Exh.10 filed by the Petitioners i.e. the Defendant Nos.1 and 2 for impleadment of the Sangli-Miraj-Kupwad Municipal Corporation as a Defendant to the suit came to be rejected. The impleadment of the said Municipal Corporation was sought on the ground that the work in question was carried out by the Petitioners/original Defendant Nos.1 and 2 for and on behalf of the said Municipal Corporation. The said contention was not found acceptable by the Trial Court on the ground that the notice inviting tenders was issued by the Executive Engineer of the Defendant Nos.1 and 2, the tender was accepted by the Defendant Nos.1 and 2 and the contract with the Respondent No.1 was also executed by the Defendant Nos.1 and 2. Hence,

the Trial Court was of the view that the Municipal Corporation is neither proper nor necessary party for it to be impleaded in the suit in question. The Learned Counsel appearing on behalf of the Petitioners Mr. A. R. Pitale sought to draw this Court's attention to the averments appearing in paragraph 14 of the plaint and also paragraphs 14 and 17 of the Written Statement so as to contend that the presence of the Municipal Corporation is necessary for the adjudication of the suit in question. In so far as paragraph 14 is concerned, the averments contained therein are referable to some condition of the tender and in so far as averments in paragraphs 14 and 17 of the Written Statement are concerned, the said averments are based on the said paragraph 14 of the plaint. In so far as the conditions of the tender are concerned, it would always be open for the Petitioners i.e. Defendant Nos.1 and 2 to take shelter of the said condition as a matter of defence to the suit. However, on the said basis they cannot seek impleadment of another party i.e. the Municipal Corporation on the ground that the claim of the Plaintiffs would actually lie against the said Municipal Corporation. If such defences are raised on behalf of the Defendant Nos.1 and 2, the Trial Court obviously would have to consider the same at the time of trial. Hence, without interfering with the impugned order but subject to the observations made as above, the above Writ Petition is dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.