

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9799 OF 2015**

Jamal Ahmed Khan

..Petitioner

Vs.

Suvarna Ramesh Kasawlekar & Ors

..Respondents

Mr. P. S. Dani, Senior Advocate i/b Mr. Sham Walve for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 8th OCTOBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-7-2015 passed by the Learned Joint Civil Judge Junior Division, Uran, by which order, the application Exhibit 61 filed by the heirs of the original Defendant No.2 i.e. the Respondent Nos.1 to 3 herein, came to be allowed and the Plaintiffs were directed to add the Applicants i.e. the Respondent Nos.1 to 3 herein as the legal heirs of the deceased Defendant No.2.

2 The Suit in question being Regular Civil Suit No.73 of 2007 has been filed for the following reliefs :

“(a) That this Hon'ble Court be please to declare that Plaintiff No.1 is the dealer of the defendant No.1 in respect of the Petrol pump in the name and style of “Ramesh Automobiles” situate at Jasai, Taluka Uran (New Bombay) Dist Raigad, Maharashtra.

(b) This Hon'ble court be pleased to direct the Defendant No.1 to execute dealership agreement

with the plaintiff No.1 irrespective of defendant No.1 sign the same or not.

(c) This Hon'ble Court be pleased to direct the Defendant No.2 to execute the agreement alongwith the Plaintiff No.2 for dealership in respect of Petrol Pump in the name and style of "Ramesh Automobiles" situate at Jasai, Taluka Uran (New Bombay) Dist Raigad, Maharashtra with Defendant No.1."

3 The Subject matter of the Suit is the dealership of the original Defendant No.1 Indian Oil Corporation Ltd. which had entered into an dealership agreement with the Defendant No.2 Ramesh Kasawlekar in the name of his proprietorship concern i.e. Ramesh Automobiles, the Plaintiff No.1 to the Suit. Hence the dealership was originally in the name of the proprietary concern of the said Ramesh Kasawlekar. It appears that in the year 1996, the Plaintiff No.2 i.e. the Petitioner herein Jamal Ahmed Khan was permitted to be joined as a partner in the said Ramesh Automobiles which thereby was reconstituted as a partnership firm. The approval in that regard was accorded by the Respondent No.4 herein i.e. Indian Oil Corporation Ltd. vide its letter dated 24-1-1996. the said approval was required to be taken in view of clause 47 of the dealership agreement dated 20-8-1991 entered into by the said Defendant No.2 with the Indian Oil Corporation Ltd. After the Petitioner herein i.e. Jamal Ahmed Khan was permitted to be joined as a partner to the partnership firm, the business of the oil dealership was carried on. The filing of the Suit in the name of the said partnership firm Ramesh Automobiles and that

the said Jamal Ahmed Khan being Plaintiff No.2, is indicative of the fact that all was not well between the partners in so far as the said partnership business is concerned which is also reflected from the reliefs which have been sought in the Suit which are adverted to in the earlier part of the instant order.

4 The said Ramesh Kasawalekar i.e. original Defendant No.2 expired on 16-3-2014 i.e. during the pendency of the Suit. The Plaintiffs filed an application under Order XXX Rule 4 of the Civil Procedure Code seeking the reliefs that they are not required to bring the heirs of the Defendant No.2 on record having regard to the partnership deed. In term the Respondent Nos.1 to 4 herein i.e. the heirs of the said Ramesh Kasawalekar also filed an application to bring themselves on record as heirs of the original Defendant No.2. The said application numbered as Exhibit 61. The said application was opposed to on behalf of the Plaintiffs on the ground that such an application would not lie and that under the provisions of Order XXX Rule 4 it is not necessary to join the legal heirs of the deceased partner.

5 The Trial Court considered the said application on the basis of the material on record. Before the Trial Court, it was sought to be contended on behalf of the Plaintiffs that in terms of clause (23) of the Partnership Deed which clause was in terms of the requirements of the Indian Oil Corporation Ltd. as stipulated by the approval letter. On the death of one of the partners, the partnership firm shall ipso-facto be dissolved and it will be the choice of surviving partners to carry on business of the partnership firm as proprietorship

firm. The Trial Court did not countenance the said submission on the ground that since the same would have to be done by the prior permission of the Indian Oil Corporation Ltd. and since the Indian Oil Corporation Ltd. who is the Defendant No.1 has no objection to the application filed by the heirs of the said Ramesh Kasawalekar the said submission at the behest of the Plaintiff No.2 could not be accepted. The Trial Court also adverted to the fact that till the date of filing of the application no permission was granted by the Indian Oil Corporation Ltd. to the Plaintiff No.2 to carry on the business of dealership as a proprietor and therefore the heirs of the Defendant No.2 have every right to file the application to bring themselves on record.

6 In my view, apart from the reasons mentioned by the Trial Court in the impugned order, but also having regard to the nature of the reliefs which have been sought by the Plaintiffs especially against the Defendant No.2 in the Suit in question, the order passed by the Trial Court permitting the heirs to be brought on record cannot be faulted with. It is also required to be borne in mind that the Suit was filed when the said Ramesh Kasawalekar alive and in fact was arrayed as the Defendant No.2 to the Suit. In my view therefore, the impugned order does not suffer from any error of jurisdiction or any other illegality or infirmity for this court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

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