

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

WRIT PETITION NO. 9325 OF 2015

Mercedes Benz India Pvt Ltd.

..Petitioner

Vs.

Shri Noshir Desai & Ors.

..Respondents

Mr. Abhay A Anturkar a/w Mr. R. C. Barge for the Petitioner

Mr. Anosh Sequeira i/b Hariani & Co. for the Respondent No.1

CORAM : R.M.SAVANT, J

DATE : 5th October 2015

PC. :

1 The Writ Jurisdiction of this Court is invoked against the order dated 10-8-2015 passed by the Learned Extra Joint Civil Judge Senior Division, Pune, by which order the application Exhibit 39 filed by the Defendant No.1 for deletion of the Defendant Nos.3 to 7 came to be rejected.

2 The Suit in question has been filed by the Respondent No.1 herein who it seems was in the employment of the Petitioner herein. The Suit has been filed claiming an amount of Rs.14,35,403/- along with 12% interest per annum towards balance Superannuation amount for the years 2004 to 2012 as per details in the particulars of claim. In the said Suit, the Defendant No.1 has filed its Written Statement as also the Defendant Nos.2 to 7 have filed a pursis

adopting the Written Statement filed on behalf of the Defendant No.1. The Suit is at the stage where the affidavit of evidence has been filed by the Respondent No.1 / Plaintiff. It is at the said stage that the instant application Exhibit 39 came to be filed by the Defendant No.1 for deletion of the Defendant Nos.3 to 7. The deletion is sought on the ground that the Defendant Nos.1 and 2 are registered Companies who can sue or can be sued in their own name and that there is not a single pleading, allegation, contention against the Defendant Nos.3 to 7 of having entered into contract with the Plaintiff in their personal capacity or that the Defendant Nos.3 to 7 are responsible for the alleged payments to the Plaintiff. The foundation of the said application is as aforestated. The said application Exhibit 39 came to be replied to on behalf of the Plaintiff. It was stated in the reply that the application has been filed at a belated stage when the Plaintiff's witness was to be cross-examined, that the application has also been filed after the Defendant Nos.2 to 7 have filed their Written Statement, and that the Plaintiff is seeking a decree which would be joint and several against the Defendants.

3 The said application was considered by the Trial Court and has been rejected by the impugned order dated 10-8-2015. The Trial Court has adverted to the averments made in the Plaint and especially in paragraphs 6 , 7 and 10 of the Plaint. The Trial Court has also adverted to the posts which the Defendant Nos.3 to 7 are holding in the Defendant No.1 and the Defendant

No.2 company. The Trial Court having regard to the fact that a joint and several decree is sought held that the Defendant Nos.3 to 7 could not be allowed to be deleted. The Trial Court has also rejected the application on the ground that the same has been filed belatedly after the Suit has progressed substantially.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. Anturkar would contend that the Defendant Nos.1 and 2 being legal entities by themselves and in the absence of any allegations made against the Defendant Nos.3 to 7, the presence of the Defendant Nos.3 to 7 was not necessary in the Suit. The Learned Counsel drew this Courts attention to the averments made in the Plaint in an endeavour to demonstrate that there were no allegations of malafides etc., against the Defendant Nos.3 to 7. The Learned Counsel would further contend that the application Exhibit 39 was not filed at a belated stage as held by the Trial Court.

5 Per contra the Learned counsel appearing for the Respondent No.1 Mr. Sequeira would support the impugned order. The Learned Counsel drew this courts attention to the stage at which the instant application Exhibit 39 was filed. The Learned Counsel would therefore contend that no interference was called for with the impugned order in the Writ Jurisdiction of this court.

6 Having heard the Learned Counsel for the parties, in my view, the order passed by the Trial Court rejecting the application Exhibit 39 cannot be found fault with in the light of the averments which are appearing in paragraphs 6, 7 and 10. It is well settled that the Plaintiff is the dominus litus and it is for the Plaintiff to decide as to who are required to be joined as parties to the Suit in the context of the relief that the Plaintiff would be seeking in the Suit. In the instant case, the Plaintiff has attributed certain acts to the Defendant Nos.1, 6 and 7 which can be gathered from the averments made in paragraphs 6, 7 and 10 of the Plaint. The Plaintiff is also seeking a joint and several decree against the Defendants. Whether such a decree could be granted to the Plaintiff is for the Trial Court to decide. In so far as the contention of the Learned Counsel for the Petitioner that the application Exhibit 39 was not made at a belated stage is concerned, even assuming it to be so, having regard to the averments made in the Plaint especially in paragraphs 6, 7 and 10 the impugned order cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is therefore made out the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

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