

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10858 OF 2014

Priyanka Ridham Gada	]
Occupation : Business, residing at	]
Flat No.1202, Chandanbala Building	]
Sarvodaya Nagar, Mulund (West)	]..... Petitioner.
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10413 OF 2014

M/s. Om Electricals, the Partnership	]
Firm, having its registered office at	]
411, 4 th Floor, Sai Arcade, N.S. Road,	]..... Petitioner
Mulund (West), Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10414 OF 2014

Natubha Keranjibha Jadeja,	]
Age 58 years, Occupation : Business,	]
Sole Proprietor of Krupa Electricals	]
Having Office at 411, 4 th Floor, Sai	]
Arcade, N.S. Road, Mulund (West),	]..... Petitioner
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10415 OF 2014

Hitesh Jadhavji Thakkar	]
Aged 41 years, Occupation : Business	]
residing at Flat No.B/1503, Tower I,	]
Vikas Paradise, Mulund (West),	]..... Petitioner.
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10416 OF 2014

Hitesh Jadhavji Thakkar	]
Aged 41 years, Karta of Hitesh Jadhavji	]
Thakkar H.U.F. Occupation : Business,	]
residing at Flat No.B/1503, Tower I,	]
Vikas Paradise, Mulund (West),	]..... Petitioner.
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

**WITH
WRIT PETITION NO.10417 OF 2014**

Jadhavji Karamshi Thakkar	]	
Aged 66 years, Occupation : Business,	]	
residing at Flat No.B/1503, Tower I	]	
Vikas Paradise, Mulund (West)	]	 Petitioner.
Mumbai – 400 080	]	(Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]	
The Partnership Firm, having its office	]	
at 2, Rohini, R.R.T. Road.	]	 Respondent.
Mulund (West), Mumbai – 400 080	]	(Org.Defendants)

**WITH
WRIT PETITION NO.10418 OF 2014**

Ridham Ashwin Gada	]	
Aged 28 years, Occupation : Business	]	
residing at Flat No.1202, Chandanbala	]	
Building, Sarvodaya Nagar, Mulund (West)	]	 Petitioner.
Mumbai – 400 080	]	(Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]	
The Partnership Firm, having its office	]	
at 2, Rohini, R.R.T. Road.	]	 Respondent.
Mulund (West), Mumbai – 400 080	]	(Org.Defendants)

**WITH
WRIT PETITION NO.10419 OF 2014**

Jadhavji Karamshi Thakkar	]	
Age 66 years, Karta of Jadhavji K.	]	
Thakkar HUF Occupation : Business,	]	
residing at Flat No.B/1503, Tower I	]	
Vikas Paradise, Mulund (West)	]	 Petitioner.
Mumbai – 400 080	]	(Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10420 OF 2014

Hirak Kaushik Gada	]
Aged 54 years, Occupation : Business,	]
residing at Flat No.A/601, Tower III	]
Vikas Paradise, L.B.S.Marg, Mulund (West)	].... Petitioner.
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10421 OF 2014

Kaushik Premji Gada	]
Aged 54 years, Karta of Kaushik Premji	]
Gada H.U.F. Occupation : Business,	]
residing at Flat No.A/601, Tower III	]
Vikas Paradise, L.B.S.Marg, Mulund (West)	].... Petitioner.
Mumbai – 400 080	] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers	]
The Partnership Firm, having its office	]
at 2, Rohini, R.R.T. Road.	].... Respondent.
Mulund (West), Mumbai – 400 080	] (Org.Defendants)

WITH
WRIT PETITION NO.10422 OF 2014

Ashwin Premji Gada]
Aged 58 years, Karta of Ashwin P. Gada]
H.U.F. Occupation : Business,]
residing at Flat No.1202, Chandanbala]
Building, Sarvodaya Nagar,]..... Petitioner.
Mulund (West), Mumbai – 400 080] (Org. Plaintiff)

versus

M/s. Sai Pooja Developers]
The Partnership Firm, having its office]
at 2, Rohini, R.R.T. Road.].... Respondent.
Mulund (West), Mumbai – 400 080] (Org. Defendants)

Mr. P S Dani, Senior Advocate, with Mr. P A Sarwankar i/by Sarwankar &
Co. for the Petitioners.

Mr. Ganesh S Bhat for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 04th February 2015

JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The above Petitions filed under Article 227 of the Constitution of India take exception to the order dated 25/3/2014 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Summons for Judgments filed in each of the suits by each of the Petitioners in the above Petitions who are the original Plaintiffs came to be dismissed.

3 It is not necessary to burden this order with unnecessary details considering the nature of the order that is required to be passed. Suffice it to state that the Summons for Judgment in each of the suits has been dismissed on the ground that the suits filed by the Plaintiffs in the present form are not maintainable. The Petitioners in each of the above Petitions are the original Plaintiffs whereas the Respondents in each of the above Petitions are the original Defendants in the suits. The suits filed by the Petitioners/Plaintiffs are filed under Order XXXVII of the Code of Civil Procedure for recovery of the amounts which the Plaintiffs have advanced to the Defendants.

4 For the sake of convenience Writ Petition No.10858 of 2014 would be treated as the lead matter and the facts in Summary Suit No.4439 of 2013 would be referred to. It is the case of the Plaintiff that the Defendant is a partnership firm engaged in the business of development of properties. It is further the case of the Plaintiff that the partners of one Prem Group joined the Defendant to develop the property being Plot No.05, Sector 16, Kamothe, Navi Mumbai. It is further the case of the Plaintiff that the Defendant raised funds by several modes including the loan from the Plaintiff. It is further the case of the Plaintiff that she has advanced a total sum of Rs.92,00,000/- to the Defendants by 6 different cheques dated 20/09/2010, 20/05/2011, 31/01/2012, 14/03/2012, 23/05/2012 and 05/02/2013. It is further the case of the Plaintiff that the Defendants have repaid the loan partly, however, as on

30/09/2013 the outstanding amount was Rs.71,90,571/- which included the interest accrued on the principal sum. It is further the case of the Plaintiff that the Defendants have acknowledged the liability to pay the said debt in the financial year 2010, 2011, 2012 and 2013. It is lastly the case of the Plaintiff that as the Defendants have acknowledged the debt, the Plaintiff has sought a decree for the sum of Rs.71,90,571/- with interest @ 12% p.a. on the principal sum of Rs.63,00,000/-.

5 In the said suit the Plaintiff filed Summons for Judgment for a decree being passed for a sum of Rs.71,90,571/- with interest @ 12% p.a. on the principal sum of Rs.63,00,000/-.

6 In the said Summons for Judgment, the Defendants filed its Affidavit in Reply and admitted the claim made by the Plaintiff, however, sought unconditional leave to defend.

7 The Trial Court considered the said Summons for Judgment and has by the impugned order dated 25/03/2014 dismissed the same. The gist of reasoning of the Trial Court is that the pleadings in paragraph 7 of the plaint show that there is a dispute between the partners inter-se of the Defendant-firm. The Trial Court has also adverted to paragraph 2 of the plaint that one M/s. Prem Group have joined the Defendant-firm and a Partnership Deed was

accordingly executed 24/09/2009. The Trial Court has further observed that no names of the partners Defendant-firm and M/s Prem Group are disclosed either by the Plaintiff or the Defendants. In so far as the acknowledgement of debt is concerned, the Trial Court has observed that the said acknowledgement does not show the name of the person who executed the acknowledgement on behalf of the Defendant-firm. The Trial Court observed that though the suit has been filed against the Defendant – M/s. Sai Pooja Developers, the suit transaction pertains to M/s. Prem Group and the partnership entered into between the two firms i.e. the Defendant and M/s. Prem Group. The Trial Court therefore observed that the suit as filed in the present form was not maintainable. The Trial Court thereafter adverted to Sections 9 and 19 of the Partnership Act, 1932, and has observed that the affidavit in reply filed on behalf of the Defendant to the said Summons for Judgment without disclosing the names of the partners violates Sections 9 and 19 of the Partnership Act. The Trial Court observed that in the absence of proof indicating any authority, the admission in the form of affidavit-in-reply cannot be relied upon. The Trial Court also relied upon the judgment of the Calcutta High Court reported in **AIR 1989 Calcutta 254** in the matter of **Tilokram v/s. Geeta Rani** wherein the Calcutta High Court was pleased to observe that a suit against a partnership firm without joining some partners to the suit is bad for non joinder. The Trial Court observed that since the admission of claim by any partner is prohibited under Section 19(2) of the Partnership Act, the same

would be hit by the provisions of Section 23 of the Contract Act, and therefore the same is illegal and void. The Trial Court held that the facts prima facie disclose an unwholly alliance in between the parties to get the decree passed against the Defendant-firm and therefore dismissed the Summons for Judgment by the impugned order dated 25/03/2014. As indicated above, it is the said order dated 25/03/2014 which is taken exception to by way of the above Writ Petition.

8 The learned Senior Counsel for the Petitioners Shri P S Dani would contend that in view of the provisions of Order XXX Rule 1 of the Code of Civil Procedure the finding of the Trial Court that the suit in the present form is not maintainable cannot be sustained. The learned Senior Counsel also relied upon Order XXI Rule 50 Code of Civil Procedure which provides for execution of a decree passed against a firm against the property of the firm. The learned Senior Counsel would contend that unless the partners are to be made personally liable so that the decree could be executed against them under Order XXI Rule 50 of the Code of Civil Procedure, there is no necessity for joining the partners to the suit. The learned Senior Counsel for the Petitioner would contend that the suit filed against the partnership firm is maintainable and if the learned Judge was of the opinion that the partners were required to be joined to the suit as Defendants, the Trial Court ought to have given an opportunity to the Plaintiffs to join the said partners in each of the suits, but

could not have dismissed the Summons for Judgment on the ground of maintainability of the suits. The learned Senior Counsel would therefore contend that the Trial Court having rejected the Summons for Judgment on a wrong premise viz. that the suit is not maintainable unless the partners are joined, the matter is required to be relegated back to the Trial Court for a de-novo consideration.

9 Per contra, the learned counsel appearing on behalf of the Respondent i.e. the Defendant in each of the suits in each of the above Petitions Shri Bhat would contend that the Summary Suits in question are not maintainable as they are founded on the cheques issued by the Defendant. The learned counsel for the Respondent would contend that if the Trial Court was of the view that the partners were required to be joined, it ought to have given an opportunity to the parties to bring the partners on record. The learned counsel would contend that the Trial Court in the facts of the present case ought to have granted unconditional leave.

10 Having heard the learned counsel for the parties, I have considered the rival contentions. It is required to be noted that the Summary Suits are founded on the alleged confirmation of accounts and acknowledgements of debts by the Defendant in each of the suits. It is required to be noted that in the affidavit-in-reply filed by the Defendant to the

said Summons for Judgment in each of the Summary Suits, the Defendant has acknowledged the debts owed by it to the Plaintiff-firm/firms. In so far as the suits are concerned, Order XXX Rule 1 of the Code of Civil Procedure provides that the partners can be sued in the name of the firm. This being done by the Plaintiffs, it therefore cannot be said that the suits which were filed were not maintainable in view of the fact that the partners were not joined as parties to the suits. If the Trial Court was of the view that in view of the disputes between the partners it was necessary to join the said partners to the suits then it ought to have given an opportunity to the Plaintiffs to join the said partners to the suits, but however could not have dismissed the Summons for Judgment on the ground that the suits are not maintainable as the partners are not joined as parties to the suits. In the said context it is also opposite to refer to Order XXI Rule 50 of the Code of Civil Procedure which provides the manner in which the decree obtained against the firm can be executed. The said provision postulates that the decree passed against the firm can be executed against the property of the firm and it is only if the Plaintiff seeks to execute the decree against the partners personally that the partners are required to be joined as parties to the suits.

11 In my view, since the Plaintiffs in the instant cases desired to proceed only against the firm, the suits were maintainable on the application of Order XXX Rule 1 of the Code of Civil Procedure. The Trial Court has therefore

erred in observing that the suits are not maintainable for the reasons that there are serious disputes between the partners of the firm and in the absence of the partners as parties to the suits, the suits are not maintainable. At the cost of repetition, it is required to be noted that if the Trial Court was of the view that the partners were required to be joined for some reason, then it ought to have given an opportunity to the Plaintiffs to join the partners and thereafter ought to have adjudicated upon the Summons for Judgment. The impugned orders dated 25/03/2014 are therefore required to be quashed and set aside and are accordingly quashed and set aside. The Summons for Judgment filed by the Plaintiffs in each of the Summary Suits in questions would accordingly stand restored to file and would be remanded back to the Trial Court for a de-novo consideration in terms of the observations made herein above. Needless to state that the contentions of the parties are kept open for being urged before the Trial Court. All the above Petitions are accordingly allowed. Rule in all the above Petitions are made absolute to the aforesaid extent with parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]