

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5808 OF 2013

Dinesh Shankarlal Darakh	.. Petitioner
Versus	
M/s Videocon Industries Ltd.	.. Respondent

Shri Pramod F. Patni, Advocate for the Petitioner.
Shri Nikhil S. Jaju, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 06TH DECEMBER, 2016.**

PER COURT :

. The application filed by the petitioner for addition of party is rejected. Aggrieved thereby present petition.

2. Mr. Patni, the learned counsel for the petitioner submits that, the petitioner had filed suit for recovery against the respondent on the basis of consolidated statement issued by the respondent herein/original defendant. The said companies which are sought to be added as parties are sister concern of the original defendant. The Court has rejected the said application on the ground that, the plaintiff has moved an amendment application. The learned counsel submits that, U/O I Rule 10(2) of the Code of Civil Procedure, permits parties to be added at any stage of the suit. The said aspect is not considered.

3. Mr. Jaju, the learned counsel for the respondent/defendant submits that, the companies which are sought to be added as parties are independent companies. They are independent legal entities. They cannot be allowed to be added. The claims against the independent companies are separate and distinct claims. In fact, the defendant is not liable for the suit claim itself. In the written statement itself the defendant had made it clear and more particularly in para 11 of the written statement it is submitted that, the suit is not maintainable for the alleged dues of sister concern. The plaintiff had also filed application for amendment on 09th April, 2008. Thereafter plaintiff adduced his evidence by way of affidavit on 15.09.2011 and now the application has been moved for addition of parties. The addition of parties would amount to mis-joinder of parties. The claim against proposed added parties and the causes of action are different.

4. I have considered the submissions canvassed by the learned counsel for respective parties. The petitioner/plaintiff has filed suit for recovery against the present respondent/original defendant in the year 2006. The written statement is filed by the present respondent/defendant on 04.01.2008. A specific contention is raised in the written statement that, the suit is not maintainable for the alleged dues of sister concern. It appears that, the plaintiff had also earlier filed application for

amendment with regard to cause title. The same was allowed. Thereafter, the plaintiff by way of examination in chief on affidavit adduced evidence on 15.09.2011.

5. The dispute about, whether the companies sought to be added as parties under application Exhibit 76 are independent entities or sister concern or it is defendant's liability will have to be dealt with separately.

6. It is not the case that, the plaintiff was not aware of these legal entities. The consolidated statement was issued to the plaintiff as per the averments of the plaintiff. Even annexure of the plaint gives the details of the same, still the plaintiff did not add them as parties. In such a case, the plaintiff would not be entitled to the benefit of proviso to Sec. 21 of the Limitation Act. Sec. 21(1) of the Limitation Act reads as under :

THE LIMITATION ACT, 1963

1.

21. Effect of substituting or adding new plaintiff or defendant.--

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to

mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

7. Considering lethargy on the part of the plaintiff in adding the proposed parties, even after the written statement was filed in January 2008 is required to be considered.

8. In the light of the above, I pass following order.

9. The plaintiff is allowed to add parties detailed in application Exhibit 76. They shall be deemed to have been added, when they are so made as a party. The suit shall be deemed to have been instituted against them when they are so made as a party. The objection with regard to mis-joinder of causes of action and parties so also all admissible defences may be raised by the parties as would be permissible in law after their appearance. The writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]