

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 342 OF 2016

SHRI. SUNIL GAWAS.

... Petitioner

Versus

CITI CORP. FINANCE INDIA LTD.,

... Respondent

Shri Jagannath Jayant Mulgaonkar, Advocate for the Petitioner.

Shri S. M. Singbal, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 28th September, 2016

ORAL ORDER :

By this petition, the petitioner/plaintiff is challenging the order dated 16/07/2015 passed by the learned Senior Civil Judge at Panaji in Special Civil Suit No.86/2007/B. By the impugned order, application filed by the petitioner under Order 1 Rule 10 of CPC for addition of Safe Express Pvt. Ltd. as a party to the suit has been dismissed.

2. The brief facts are that the petitioner has filed the aforesaid Civil Suit against the respondent for compensation and restoration of vehicles namely Swaraj Mazda bearing nos.GA-01-Z-0315 and GA-01-Z-0316 and for permanent injunction. The case made out in the plaint is that the vehicles were financed by the respondent on the basis of a Higher Purchase Agreement to which Safe Express Private Ltd. is a corporate guarantor. The specific case made out in para 2 of

the plaint is that Safe Express Private Ltd. was alone liable and responsible for the repayment of the amount financed by the respondent. According to the petitioner, on 8/01/2005, the respondent unilaterally and in a high handed manner took away the vehicles. In such circumstances, the petitioner is claiming compensation and restoration of the vehicles.

3. The petitioner filed an application under Order 1 Rule 10 of CPC claiming that Safe Express Private Ltd. is a necessary party and is required to be impleaded as defendant no.2 as no effective decree can be passed in their absence. The application was opposed on behalf of the respondent. The learned Trial Court found that the suit is for recovery of possession of the vehicles and for compensation and there is no cause of action pleaded or relief claimed against Safe Express Private Ltd. in the suit and, therefore, the learned Trial Court has held that it is not possible to conclude that Safe Express Private Ltd. is a necessary or a proper party.

4. The learned Counsel for the petitioner has submitted that inasmuch as the Safe Express Private Ltd. is a corporate guarantor and were liable to pay the instalments, it is a necessary party. He submits that in any case, Safe Express Private Ltd. would be a proper party to the suit. It is submitted that the plaintiff being dominus litis can decide upon who should be party defendant to the suit and the respondent may not have any say in the matter.

5. On the contrary, it is submitted by the learned Counsel for the respondent that in view of the allegations made in the plaint and the reliefs claimed Safe Express Private Ltd. cannot be said to be either a necessary or a proper party. It is submitted that the dispute is essentially between the petitioner and the respondent and the learned Trial Court has rightly come to the conclusion that no case for impleadment of the party is made out.

6. I have carefully considered the submissions made. There cannot be any manner of dispute that the plaintiff being dominus litus can decide as to who should be a party to the suit. This right of the plaintiff is however subject to the powers of the Court under Order 1 Rule 10(2) of CPC, where the Court can add or strike off parties. Thus, it is always open to the Court to consider whether a particular party which is sought to be impleaded is either a necessary or a proper party. In the present case, as noticed above, the dispute is whether the respondent has illegally and unauthorisedly obtained the custody of the vehicles and whether the plaintiff is entitled for restoration of such vehicles along with compensation. Merely because Safe Express Private Ltd. is the corporate guarantor to the Higher Purchase Agreement, would not be sufficient to conclude that it is either a necessary or a proper party. The Hon'ble Apex Court in the case of RAMESH HIRACHAND KUNDANMAL V/S. MUNICIPAL CORPORATION OF GREATER BOMBAY (1992) 2

SCC 524 has held that there is a distinction between a party who can said to be either necessary or a proper party and a party who may be having best evidence to give in the matter. In my considered view, merely because the Safe Express Private Ltd. is the corporate guarantor to the Higher Purchase Agreement is not sufficient to hold that they are required to be impleaded in the suit having regard to the nature of the dispute in the suit.

7. I do not find that the impugned order suffers from any infirmity so as to warrant interference. The Writ Petition is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

NH