

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5896 OF 2013

M/S. B. J. ENTERPRISES,

...Petitioner

Versus

SHRI. RAMDAS DATTATRAY NAIK
(DECD) THROUGH LRS, AND ORS

...Respondents

....

Mr. Salik Khan, Advocate for the Petitioner.

Ms. Supriya Ghodge a/w. Kamlesh Ghumre, Advocate for
Respondent No.3 – CIDCO.

Mr. Rajesh Parab, Advocate for Respondent Nos.7 to 14.

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CORAM : R. G. KETKAR, J.

DATE : 11th APRIL, 2016

P.C.

1. Heard Mr. Salik Khan, learned Counsel for the petitioner, Ms. Supriya Ghodge, learned Counsel for respondent No.3–CIDCO and Mr.Rajesh Parab, learned Counsel for respondent Nos.7 to 14, at length.

2. Office remark shows that respondent Nos.1/1 to 1/5 and respondent Nos.5 to 13 are served. As respondent Nos.7 to 14 are the contesting respondents and are represented by Mr.Parab, the service on rest of the respondents is dispensed with.

3. Rule. Learned Counsel for the respective parties waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 19.3.2013 passed by learned Jt. Civil Judge, Senior Division, Panvel below Exhibit-70 in Special Civil Suit No.399/2006. By that order, learned trial Judge allowed the application made by respondent Nos.7 to 14 for impleading them in the suit.

5. While allowing the application, the only reasons given by the learned trial Judge are to be found in paragraph-10. Though several decisions were cited before the learned trial Judge, the learned trial Judge did not refer to any of the rulings. Learned trial Judge merely observed that taking into consideration the legal complexity in the present matter as well as the lawful rights of the applicants, with a view to seeing that their lawful rights are protected, it is necessary to implead them. In my opinion, this cannot be a reason for allowing the

application. Learned trial Judge should have dealt with the decisions cited before him. Learned trial Judge should have recorded a finding as to whether respondent Nos.7 to 14 are necessary or proper party. Without recording any such finding, the learned trial Judge has allowed the application. On this count alone, the impugned order deserves to be set aside thereby restoring the application Exhibit-70 to the file of the learned trial Judge for deciding the same afresh. Hence, the impugned order is quashed and set aside and the application Exhibit-70 is restored to the file of the trial Court. Learned trial Court will deal with the contentions raised before it and also the decisions cited before it and shall dispose of the application by a speaking order. Learned trial Judge is requested to decide the application within four weeks from the date of appearance of the parties. Contentions of all parties on merits are expressly kept open. Rule is made absolute in aforesaid terms with no order as to costs. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)