

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

WRIT PETITION NO. 10127 OF 2016

Shri Babulal Pukharaj Jain

..Petitioner.

Vs

Shri Satish Govind Jagtap and
Ors

.. Respondents

Mr. A.V.Anturkar, Senior Advocate i/b Tanaji Mhatugade, Advocate
for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 31/08/2016

PC:

1. Not on Board. At the request of Mr.Anturkar, taken up for admission. Heard Mr. A.V.Anturkar, learned senior counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant no.2' has challenged the Judgment and order dated 30.6.2016 passed by the learned Judge of the Small Causes Court at Bombay below Exhibit 283 in Civil Suit No. 140 of 2007 as also the Judgment and order dated 20.8.2016 passed by learned District Judge-17, Pune in Civil Revision Application No. 36 of 2016. By these orders, the Courts below dismissed the application Exhibit 283 made by defendant no.2 under Order VII Rule 11(a) for rejecting the plaint on the ground that it does not

disclose any cause of action, qua defendant no.2.

3. In support of this Petition, Mr. Anturkar has taken me through :

1. Plaintiff filed by the respondents in Civil Suit No.140 of 2007. He submitted that except prayer (1a) in the suit, there is no assertion against defendant no.2 in the entire suit. In paragraph 1(A), the plaintiffs asserted that wherever the reference to defendant is made, the same shall be read as reference to defendant no.1. In other words, he submitted that the plaintiff is liable to be rejected as it does not disclose any cause of action against defendant no.2. He submitted that during the pendency of the suit, original defendant, now defendant no.1, filed written statement alleging that his brother, defendant no.2 is in occupation of the suit premises. Plaintiff, therefore, filed application for impleading defendant no.2 as party defendant which was allowed on 9.10.2007. Even after amending the plaintiff, there are no averments against defendant no.2. Mr. Anturkar submitted that the learned trial Judge rejected the application on the ground that while allowing the application Exh.16 filed by the plaintiffs on 9.10.2007, it was observed that defendant no.2 is a necessary party for just decision so as to decide real controversy between the parties. Defendant no.2 was added as the Court came to the conclusion that defendant no.2

was a necessary party. Hence, suit cannot be dismissed against defendant no.2 under Order VII, Rule 11 of C.P.C.

4. Mr. Anturkar submitted that aggrieved by this decision, defendant no.2 preferred Revision Application. By the impugned order, the learned District Judge rejected the Revision Application. In paragraph 10, the learned District Judge observed that the amended plaint impliedly shows the existence of cause of action accrued against defendant no.2. Therefore, he was added as a necessary party to the suit. He submitted that there is no concept of or implied existence of cause of action. It has to be apparent from reading of the plaint. For all these reasons, he submitted that Petition requires consideration.

5. I have considered the submissions advanced by Mr. Anturkar. I have also perused the material on record. It is settled position of law that the application under Order VII, Rule 11 can be made at any stage of the proceedings. However, from the material on record, it is evident that the suit is kept today for final arguments. While rejecting the application, the learned trial Judge has observed that the plaintiffs have concluded his argument and thereafter the application was filed. In other words, recording of evidence is already over and the plaintiff has also concluded the argument and the suit is kept today for final hearing. The learned trial Judge has observed that it is in these

circumstances the matter can be decided on merits. In my opinion, in such circumstances this is not a fit case for exercising writ jurisdiction under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is clarified that while deciding the suit the learned trial Judge will decide the same uninfluenced by the observations made in the impugned order. Order accordingly.

(R.G.KETKAR, J.)