

dik

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

WRIT PETITION NO. 11257 OF 2013

Balu Kanhu Gavade

...Petitioner

vs

Bal Gauru Hardas & Ors.

...Respondents

.....

Mr Rajesh Datar for the Petitioner

None for the Respondents.

**CORAM : N. M. JAMDAR, J.
17 OCTOBER, 2016**

P.C. :

Heard learned advocate for the Petitioner. The Respondents are served. By an order dated 11 December 2013, the parties were put to notice that the Petition will be taken up for final disposal. On last several dates, the Respondents have not entered their appearance, therefore, I have proceeded to consider the matter on merits.

2 The Petitioner has filed a Special Civil Suit bearing No. 454 of 2010 in the Court of Civil Judge, Senior Division, Kalyan, seeking damages from Respondent Nos.1 to 13 for defaming the Petitioner. An issue was framed, as to whether the Plaintiff proves that the Defendants have defamed partnership firm M/s Swati Builders and Developers. The Petitioner made an application for recasting the issue, as to whether the Plaintiff prove that the Defendants have defamed him as alleged.

3 Learned Civil Judge rejected the application observing that, “the suit rests upon movements against the M/s Swati Builders & Developers by Defendants. The movements taken by the Defendants are not personally against the Balu Kanhu Gawade, but it appears to be against M/s Swati Builders & Developers.” The approach of the learned Civil Judge is clear. In the plaint the Petitioner / Plaintiff has only described his occupation as a 'partner of the Partnership Firm' and as regard to various defamatory statements made by the Respondents against him. In these circumstances, the issue as framed “Whether the Defendants have defamed the partnership firm” will certainly affect the outcome of the case, as it is not case of the Petitioner / Plaintiff. Further more if such an issue is framed, in spite it not being the case of the Plaintiffs, the question of joining other partners will also arise.

4 In the circumstances, the order passed by the learned Civil Judge, Senior Division, Kalyan dated 23 April 2013 is required to be quashed and set aside and it is accordingly quashed and set aside. The application filed by the Petitioner below Exh.31 in Special Civil Suit No.454 of 2010 is allowed. Learned Civil Judge will recast the issue accordingly and proceed with the trial as expeditiously as possible.

5 The Writ Petition is disposed of in above terms.

(*N.M.JAMDAR J.*)