

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LETTERS PATENT APPEAL (L) NO.11 OF 2016
IN
SUIT NO. 1985 OF 2009**

Vinod M. Sharma

.... Appellant.
(Original Defendant No.6)

Vs.

Ackruti City Limited
(Now known as Hubtown Ltd)
and Others

..... Respondents.

Mr. Vikram Pai with Ms. L.M. Jenkins i/b LMJ Law Practice for the
Appellant.

Mr. Ashish Kamat, Kunal Mehta i/b Pravin Kamble for Respondent
Nos. 1, 4 and 5.

Mr. Prateek Seksaria i/b Ms. Usha Vishwanathan for Respondent No.1.

**CORAM: V. M. KANADE &
M.S. SONAK, JJ.**

DATE: 27th June, 2016

P.C.:-

1. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondents.
2. Appellant is aggrieved by the order passed by the learned Single Judge deleting him as Defendant in the suit on an oral application being made by the Respondent/original Plaintiff.

3. Preliminary objection is raised by the learned Counsel for the Respondents regarding maintainability of this appeal against the order passed by the learned Single Judge, deleting the Appellant/original Defendant No.6 from array of parties in the suit. Reliance has been placed on the Judgments of the Apex Court in *Great Eastern Shipping Company Ltd vs. Sukhdev Singh Capt. & Ors*¹ and in *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others*².

4. According to the Appellant, he is a proper and necessary party and, as such, he has a right to contest the suit and the said order affects his rights and therefore is a judgment which is appealable.

5. On the other hand, the learned Counsel appearing on behalf of the Respondent/original Plaintiff submitted that the Counsel appearing for the Appellant/Original Defendant No.6 did not raise any objection before the learned Single Judge when the order was passed deleting him from array of parties and he therefore submitted that it is not now open for the Appellant/original Defendant No.6 to challenge the said order.

6. In our considered view, since the Appellant/original Defendant No.6 claims to be a proper and necessary party, his deletion without considering his objection would really affect his rights permanently

1 2009 SCC OnLine Bom 282: 2009 3 Bom CR 268

2 (2010) 7 SCC 417

and, therefore, appeal in such circumstances would be maintainable. Ratio of the Judgments in *Great Eastern Shipping Company Ltd (supra)* and in *Mumbai International Airport Private Limited (supra)* to that extent, will not apply to the facts of the present case. Though, it does appear from the record that the learned Counsel for the Appellant/Defendant No.6 did not raise any objection, the Appellant, if aggrieved, would have right to agitate the said issue since the said order was passed on an oral application.

7. Taking an overall view of the matter, we set aside the impugned order only in order to enable the Appellant/original Defendant No.6 to raise his objection to his deletion from array of the parties and to satisfy the learned Single Judge that he is a proper and necessary party and the matter is accordingly remanded back to the learned Single Judge.

8. We are informed that the suit is kept tomorrow i.e. on 28th June, 2016 before the learned Single Judge. The learned Single Judge may hear the Appellant/original Defendant No.6 on the issue as to whether he is a proper and necessary party and thereafter pass an appropriate order in accordance with law.

9. With these directions, appeal is disposed of.

(M.S. SONAK, J.)

(V.M. KANADE, J.)