

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10097 OF 2017**

Tekchand Pahlajrai Jaisinghani ...Petitioner
Versus
Rizwan Ullah Mohammed Isahaq Shaikh & Ors ...Respondents

Mr Pradeep Lamba, for the Petitioner.
Mr Ajay Prajapati, i/b Mr Suresh Dubey, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 7th December 2017

PC:-

1. Rule, returnable forthwith. By consent, the matter is taken up for hearing and final disposal.

2. Heard.

3. The impugned order below Exhibit-26 and dated 5th October 2016 is completely unsustainable. The four respondents were the original plaintiffs. Of these, the 2nd respondent is a practising advocate. The 3rd respondent is also an advocate but apparently stands apart from the 2nd respondent. Cutting a long story short, it seems that respondents nos. 1, 3 and 4 appointed one GG Mhetre as their advocate but the 2nd respondent, as plaintiff no. 2, decided that he would pursue his own path although a co-plaintiff. The

defendant correctly applied *inter alia* on the basis of settled law including a binding decision of a single judge of this Court in *Venkatrao A Pai & Sons vs Narayanlal Bansilal & Ors*¹ that several plaintiffs cannot between them appoint different advocates or arrange different representations. It is also not possible for some of the plaintiffs to engage an advocate and another plaintiff not to join in that appointment or to proceed in person. All plaintiffs are required by law, procedure, rules and logic to be represented by one advocate. Indeed if they choose to appear in person they may appoint one of them to appear on their behalf but only one person can be heard. It is inconceivable that several plaintiffs should each speak in different voices, even if they are saying the same thing.

4. By the impugned order the Trial Court said that because the plaintiffs had agreed on a common plank, therefore, there was no difficulty with allowing respondent no. 2 to represent himself. Indeed there is, and the order is entirely erroneous and unsustainable. It is quashed and set aside.

5. If the 2nd respondent is unwilling to appoint Mr Mhetre as a plaintiff, then the 2nd respondent may decide whether he wishes to transpose himself as a defendant to the suit. Once he can be so transposed as a defendant he can appoint other advocates. There is no other option available to the respondent.

6. I am now informed that the 2nd respondent has set foot in the witness box and has proceeded to give evidence. I am wholly unclear

1 AIR 1961 Bom. 94

whether he is now giving evidence only for himself or also for his co-plaintiffs. This entire procedure is vitiated. The suit will have to start afresh. The evidence so far recorded will be disregarded in its entirety. The court will decide, whether or not an application is moved before it, whether respondent no. 2 is to continue as a co-plaintiff with the other respondents. If so, he must join in signing a vakalatnama in favour of the same advocate as is appointed by the other respondents. If he is unwilling to do so, the Court will exercise discretionary powers under the Code of Civil Procedure 1908 and transpose him as the 2nd defendant to the suit. It is after this that the Court will once again decide whether issues are required to be cast afresh and it will then recommence the trial on that basis.

7. Rule is made absolute in these terms. The Writ Petition is disposed of. There will be no order as to costs.

(G. S. PATEL, J)