

Amk

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

WRIT PETITION NO. 6885 OF 2014

Avon Infracon Pvt. Ltd. .. Petitioner
Vs.
Mr. Manvel Tuscano & Ors. .. Respondents

Mr. Ram Apte, Sr. Advocate a/w. Mr. Omprakash Jha a/w. Raghav Shekhar
i/b The Law Point for the Petitioner.
Mr. Karan Bhosale i/b Neha Bhosale for Respondent No.1.

CORAM : M. S. SANKLECHA, J.
DATE : 12th SEPTEMBER, 2017.

P. C. :

1. This petition under Article 227 of the Constitution of India challenges the order dated 21.04.2014 passed by the Joint Civil Judge Senior Division, Panvel. By the impugned order, the petitioner's application to be added as party-defendant under Order 1 Rule 10 of the Civil Procedure Code was dismissed.
2. Notice before admission issued on 05.08.2014, put the parties to notice that the petition could be disposed of finally at the stage of admission.
3. The impugned order dismissing the application on the grounds that the petitioner is not a necessary party to decide the controversy in the suit and an effective decree can be passed in the absence of the petitioner.

4. The grievance of the petitioner is that the suit property had been purchased by the petitioner from the original defendant in the year 2011 under a sale deed dated 27.12.2011. The present suit is admittedly filed in 2012 i.e. Special Civil Suit No. 325 of 2012 seeking to cancel the sale deeds executed in 2007 and 2012 between the plaintiff and the defendant in the present suit. Prior to the filing of the suit the original defendant had already sold the suit property to the petitioner in 2011. Therefore, the petitioner is necessary and proper party for effective determination of the issues involved in the suit. In support reliance is placed upon the decision of the Apex Court in the case of **Thomson Press Vs Nanak Builders and Investors Pvt Ltd & Ors. (2013) SCC 397.**

5. Mr. Bhosale, learned counsel for the respondent supports the impugned order.

6. Undoubtedly the plaintiff is dominus litus. It is for the plaintiff to decide the parties to the suit. Nevertheless in view of Order 1 Rule 10(2) of the Code of Civil Procedure, the Court has discretion to add any person as a party to the suit whose presence is necessary for effective adjudication of the issue involved in the suit. In these proceedings even though decree could be passed on the basis of the pleadings of parties before the Court, yet for an effective adjudication between the parties and a complete resolution of the dispute, the applicant would be required as party. This is as he satisfies the test of the proper party, as any order which is passed in this suit would not completely resolve the dispute, as

the petitioner has purchased the suit property from the original defendant much before the suit was filed for cancellation of the sale deed to the defendant. Therefore, to avoid multiplicity of proceedings and ensure complete adjudication of the dispute the petitioner would be necessary as a party-defendant in these proceedings. This is more particularly so, bearing in mind the fact, that the original defendant who has transferred the property, would now have no interest in contesting the suit and the decree, if any, is passed would be prejudicial to the petitioner as the source of its purchase i.e. sale deed between the plaintiff and the defendant (petitioner's vendor) is set aside.

7. In these circumstances, it is necessary that the petitioner be added as party-defendant in the present suit. Therefore, the impugned order dated 21.04.2014 is quashed and set aside.

8. The Trial Court is directed to add the petitioner as party defendant in Special Civil Suit No. 325 of 2012 pending before it. The trial Court will give appropriate directions with regard to the time to carry out the amendment and also time within which the written statement by the newly added defendant would be filed.

9. Learned counsel appearing for the parties state that directions be given to the Trial Court to dispose of the suit expeditiously as it has been pending since 2012 and particularly in view of the stay granted by this Court in 2014. The parties are at liberty to move an application before the Trial Court for expeditious hearing of the suit and the same would be

considered appropriately by the Trial Court.

10. Petition allowed in the above terms. No order as to costs.

Parties to act on the authenticated copy of this order.

[M. S. SANKLECHA, J.]