

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

WRIT PETITION NO.356 OF 2017
WITH
WRIT PETITION NO.357 OF 2017
WITH
WRIT PETITION NO.358 OF 2017
WITH
WRIT PETITION NO.4505 OF 2017

Bata (India) Ltd.

... Petitioner

Vs

M/s. Mahendra Builders & Ors.

... Respondents

...

Mr. Shyam Dewani a/w Nivedita Kundaj a/w Chirag Chanani i/b. Dewani
& Associates for the Petitioners.

Mr. P. S. Dani, Senior Advocate i/b. Vidya Khatu for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE :12th OCTOBER, 2017

ORAL JUDGMENT :

1. Not on board. Upon mentioning taking on production Board.

2. The learned counsel for the parties agree that common issues of law and facts arises in all these petitions and therefore, they may be disposed of by a common order.

3. The learned counsel for the parties agree that the presence of respondent Nos. 2 and 3 is not essential for disposal of

the present petitions.

4. Rule in each of the petitions.

5. Rule is made returnable forthwith, with the consent and at the request of the learned counsel for the parties.

6. Mr. Shyam Dewani, the learned counsel for the petitioner in each of these petitions submits that the suits which are the subject matters of these petitions were instituted by M/s. Mahendra Builders, claiming to be landlords against M/s. Gadiwala, who was styled as the tenant and the State Bank of India (SBI) which was styled as a sub-tenant.

7. Mr. Shyam Dewani, further submits that the landlord, on the alleged basis that the tenant Gadiwala has assigned tenancy rights in the suit premises to M/s. Adhie Enterprises and further, that there is some joint venture between said M/s. Adhie Enterprises and the petitioner i.e. Bata India Ltd., applied for impleadment the petitioner as party to the eviction proceeding. Mr. Dewani submits that by the impugned order, petitioner has been ordered to be impleaded as a party to the eviction proceeding. Mr. Dewani

submits that the impugned order in excess of jurisdiction because the petitioner, in terms of the agreement with M/s. Adhie Enterprise, is only to provide expertise/know how relating to operation to M/s. Adhie Enterprises. He submits that in the absence of impleadment of M/s. Adhie Enterprises, or even otherwise, the petitioner, can neither be regarded as a necessary nor proper party to such proceeding. He therefore, submits that the impugned order, which is in excess of jurisdiction is required to be interfered with and set aside.

8. Mr. P. S. Dani, learned senior Advocate, for the landlord in each of these petitions submits that the petitioner is actually in possession of the suit premises and therefore, is a proper party. Further, because *mesne* profit are claimed, the petitioner has been impleaded as a party to the eviction proceeding. Mr. Dani submits that without prejudice, the landlord, is ready and willing to even implead M/s. Adhie Enterprises as party to the proceeding, simply to obviate any contentions now raised by the Petitioners. Mr. Dani submits that there is absolutely no jurisdictional error in the

impugned order and therefore, this petitions may be dismissed.

9. In such matters, it is well settled that the plaintiff, is the *dominus litis*. According to the plaintiff-landlord it is the petitioner who is in possession of the suit premises. At this stage, it is not for the Courts to go into the veracity or otherwise of this position. All that, will have to await trial. However, it cannot be said that the petitioner is not even an proper party to the proceeding. There is neither any unreasonableness or perversity in exercise of discretion by the Trial Court in ordering the impleadment of the Petitioner. Accordingly, it cannot be said that the impugned order is vitiated any jurisdictional error.

10. That apart, the landlord, has now agreed to implead even M/s. Adhie Enterprises as a party to the proceedings for eviction. Accordingly, leave is granted to implead M/s. Adhie Enterprises, Partnership Firm as a party to the eviction proceeding. The necessary amendment to be carried out within a period of four weeks from today. The Trial Court to thereafter issue notice to M/s. Adhie Enterprises and further, grant M/s. Adhie Enterprises

opportunity of filing written statement.

11. At this stage, there is no question of going into merits of the matter. However, at the request of Mr. Shyam Dewani, it is clarified that all contentions of all parties to the eviction proceeding are specifically kept open for determination by the Trial Court in accordance with law on their own merits.

12. Since there is no case made out to interfere with the impugned order, these Writ Petitions are dismissed. However, as noted earlier, leave is granted for impleadment of M/s. Adhie Enterprises in the aforesaid terms.

13. All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)