

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.310 OF 2017
IN
CHAMBER SUMMONS NO.103 OF 2017
IN
SUIT NO.1537 OF 2012**

Sandeep Sareen and Ors.

.... Appellants

versus

ABN AMRO Bank Kolkata Pensioners
Association & Ors.

... Respondents

.....

- Mr.Arshad Shaikh i/b. Bhakti Popat, Advocate for the Appellants.
- Mr.Rohan Cama, a/w. Shanay Shah, Aditya Bhat, i/b. M/s Sanjay Udeshi & Co., Advocate for the Respondent Nos.1 & 2.
- Mr.Snehal Shah, a/w Mr.Mikhail Behl, a/w Mr.Ashir Amin, Ms. Ankita Irani, i/b. Kanga & Co., Advocate for the Respondent No.3.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 29th NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 17/04/2017 passed by a learned Single Judge of this Court (G.S. Patel, J.) by which order the Chamber Summons for

impleadment filed by the Appellant came to be rejected. The said Chamber Summons was opposed by the Defendant, as also by the Plaintiffs. The learned Single Judge has observed that though a discretion is vested under Order I Rule 10 Sub-Rule of the CPC to implead another party as a co-Plaintiff, but it does not follow that in every case it should be done. He has further observed that even it would be appropriate to do so, in the instant case the learned Single Judge has observed that if the Applicant's interests are common with those of the other pensioners represented by the two Plaintiffs then every such person need not be separately represented. He has further observed that if those two interests do not coincide or if there is an internal dispute between them, then there is no question of joining the Applicants as fellow Plaintiffs and it must be left open to them to pursue their remedies in their own civil proceedings, and to which they may join either the present Defendant and the two Plaintiffs, or all of them.

2. The learned Counsel Mr.Arshad Shaikh for the

Appellant would submit that the Appellants have commonality of interest with the Plaintiffs who have filed the suit in question and therefore having regard to order I Rule 10 of the CPC, the learned Judge ought to have exercised discretion in favour of the Applicants. The learned Counsel in support of the said submission sought to place reliance on the Judgment of the Apex Court in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors., reported in (1992) 2 Supreme Court Cases 524*. In the said case the Honourable Supreme Court was concerned with Order I Rule 10 of the Civil Procedure Code and the application filed thereunder. The trial Court in the said case had allowed the said application and the High Court had confirmed the order. The Apex Court set aside the order passed by the High Court on the ground that the Appellant therein did not satisfy the Court for being a necessary or proper party. The Apex Court observed that the application of the Applicant would turn on the meaning of the words, “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and

settle all the questions involved in the suit.” The Apex Court observed that if the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has the power to direct his impleadment so as to avoid multiplicity of proceedings. The Apex Court in the facts of the case before it, held that the said test was not satisfied and joining the intervener would lead to overlapping the issues in the suit. In the instant case, though it is claimed by the Applicant that there is a commonality of interest between them and the Plaintiffs, the Plaintiffs are however opposing the Application for impleadment by the Applicants. As rightly observed by the learned Single Judge, the Plaintiffs are “dominus litis” and it is for them to decide who or who should not be fellow Plaintiffs. The Applicants cannot foist themselves on the Plaintiffs when the Plaintiffs do not desire them to be co-Plaintiffs.

3. Hence the judgment of the Apex Court in the Ramesh Kundanmal's case *supra*, would not help the Applicants as they

cannot be said to be necessary or proper parties to the suit. It would be always open for the Applicants to file their own suits.

4. In that view of the matter, no fault can be found with the impugned order passed by the learned Single Judge. The Appeal is accordingly dismissed. However, it would be open for the Applicants to follow the course of action as propounded by the learned Single Judge i.e. filing of their own proceedings.

5. In view of the dismissal of the Appeal, the Notice of Motion No.1850/17 does not survive and to stand disposed of as such.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)