

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO.603 OF 2017
IN WRIT PETITION NO.5866 OF 2015

(Jugal Kishor Maheshwari vs. Chandrakala Chauhan and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri Z. Haq, Advocate h/f Shri Gharote, Advocate for
applicant/petitioner.

Shri A. Shelat, Advocate for respondent no.2.

CORAM : P.N. DESHMUKH, J.

DATED : JUNE 30, 2017

Heard Shri Haq, learned Counsel holding for
Shri Gharote, learned Counsel for applicant/petitioner,
and Shri Shelat, learned Counsel for respondent no.2.

This application is moved by petitioner for
grant of permission to implead some of the defendants as
respondents in the present petition contending that by
the impugned order, suit was dismissed since necessary
steps were not taken by petitioner. It is the case of
petitioner that due to inadvertence and oversight, some
of the defendants though they were parties to the
original suit remained to be made as party respondents
and as such, the defect caused is fatal and needs to be
cured by allowing this application.

The respondent no.2 has opposed the
application by filing reply and bringing on record
negligence on the part of petitioner while prosecuting
the claim before learned trial Court as well as this Court
contending that petitioner took no steps to effect service

on respondents for a period of two years. It is further submitted that in the written submissions filed by respondent no.2 it is pointed out that all the parties are not joined in the present petition and thus, for this reason, petition is liable to be dismissed. It is further contended that in spite of said fact brought on record, no steps were taken by petitioner for joining all defendants as party respondents to the petition and it is almost after delay of six months, present application is filed.

Considering the facts as aforesaid and case of respondent no.2, though prima facie it is found that approach of petitioner clearly demonstrates his gross negligence in prosecuting the claim, this by itself is no ground to reject the application as in the event application is allowed, what would happen is that cause can be put to a logical end by hearing all the parties to the petition. Moreover, the parties sought to be impleaded as party respondents in the petition were admittedly original defendants as referred in para 4 of the application and as such, if application is allowed, no prejudice can be said to be caused to respondents. In the circumstances, civil application is liable to be allowed as per order below :

The civil application is allowed. Petitioner to implead defendants in Special Civil Suit No.740/2004 as party respondents in the petition within one week and serve notice on the newly impleaded respondents within four weeks thereafter along with copy of Civil Application No.1299/2017.

CIVIL APPLICATION NO.1299 OF 2017

By consent of learned Counsel for parties,
stand over to 4/8/2017.

JUDGE

khj