

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7929 OF 2015
(Sayyad Farooq Sattar, Ahmednagar Vs. Begambee Bagwan Gulab
and others)

Mr.S.D.Kulkarni h/f Mr.S.S.Kulkarni, Advocate for the petitioner.
Mr.Y.D.Kale, Advocate for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/12/2018

PER COURT :

1. On 03/12/2018, I had passed the following order :-

“1. The petitioner is aggrieved by the order dated 07/03/2015 by which the Trial Court has rejected application Exh.18 filed by the petitioner/defendant No.2 seeking addition of Advocate Shri.J.K.Kazi, learned Advocate for the original plaintiff, to be added as a plaintiff in the suit and as a defendant in the counter claim.

2. I have heard the learned Advocates for the respective sides for quite some time. Prima facie, it appears to me that in Spl.Civil Suit No.70/2012 which is filed by respondent Nos.1, 2 and 3 as plaintiffs for seeking damages against defendants namely Haji Salam and the petitioners herein, the petitioner who is himself an Advocate, had represented the defendant in the pending suit, in the earlier rounds of litigation.

3. The ground for making the advocate as a defendant is an allegation set out in paragraph No.7 wherein it is averred that in MA No.184/1985, the petitioner/Advocate had a discussion with the said plaintiffs and he had suggested that as the plaintiffs are not the LR's of a deceased, they would not get any benefit and if the matter is settled, they might gain some thing. It is stated that by using his influence, he got the matter settled. It is admitted that no complaint has been lodged against the petitioner under the Advocates' Act, there is no allegation of having committed a professional misconduct before the Bar Council of Maharashtra and Goa and no proceedings have been independently initiated or an FIR been registered for having allegedly defrauded them.

4. As a retaliatory action, the petitioner filed Exh.18 making allegations against the Advocate of the plaintiffs on the ground that he has intentionally arrayed the petitioners as a defendants so as to indulge in professional revenge and vendetta.

5. I find that these litigating sides are likely to pollute the atmosphere and create personal and professional rivalry amongst the advocates. The petitioner was only representing the litigating sides and has been arrayed as defendant No.2 by the respondents.

6. In view of the above, the Spl.Civil Suit No.70/2012 has been stayed by this Court by order dated 19/08/2015.

7. *Before I could dictate the order of issuing RULE NISI for admitting this petition and confirming the ad-interim relief granted earlier, learned Advocate for the respondents submits that he would take instructions as to whether the petitioner could be deleted from the proceedings. Learned Advocate for the petitioner submits that if the petitioner is deleted from the said proceedings, he would not press his application for adding the Advocate of the respondents in the said proceedings.*

8. *At the request of the learned Advocate for the respondents, Stand over to 11/12/2018 for "passing orders".*

2. Mr.Kulkarni, learned Advocate for the petitioner clarifies with reference to the noting in paragraph No.3 above that the 3 plaintiffs had filed a complaint to the Bar Council against the petitioner and the complaint was dismissed for being devoid of merit.

3. Learned Advocate for the respondents submits on instructions that this petition may be allowed and application Exh.18 filed by this petitioner may be granted.

4. In view of the above statement, this petition is allowed. The impugned order dated 07/03/2015 is quashed and set aside and

application Exh.18 is granted. The plaintiffs shall add the name of Mr.J.K.Kazi as a co-plaintiff, on or before 21/12/2018, failing which,Spl.Civil Suit No.70/2012 shall stand dismissed by the Trial Court on 22/12/2018 for non-compliance. A freshly typed plaint copy need not be tendered since the addition of a co-plaintiff can be conveniently carried out by the present plaintiffs in red-ink.

5. Learned Advocate for the respondents makes a statement that the present advocate appearing on behalf of the plaintiffs would appear on behalf of the added co-plaintiff.

(Ravindra V.Ghuge, J.)