

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 945 OF 2017

Nisar Karim (Kureshi) Shaikh
Age : 42 years, Occ : Labour,
R/o 716, Baba Bangali, Near
Collector Office, Ahmednagar
Tq. and Dist. Ahmednagar

...Petitioner/Ori. Plaintiff

VERSUS

1. The Commissioner,
Ahmednagar Municipal Corporation
Ahmednagar, Tq. and Dist. Ahmednagar.
2. Sayyad Wahab Umar
Age : 45 years, Occ : Business,
R/o. Juna Bazar Road, Infront of Nagar
Times, Ahmednagar, Tq. And Dist.
Ahmednagar.
3. Sayyad Rafik Khudabaksh
Age : 42 years, Occ : Business,
R/o : 7093, Bepari Mohalla, Back side of
Collector Office, Ahmednagar Tq. and
Dist. Ahmednagar.

...Respondent/Ori. Defendant

**WITH
WRIT PETITION NO. 946 OF 2017**

Nisar Ismail Tamboli
Age : 43 years, Occ : Labour,
R/o Baba Bangali, Near Collector Office,
Ahmednagar Tq. and Dist. Ahmednagar.

...Petitioner/Ori. Plaintiff

VERSUS

1. The Commissioner,
Ahmednagar Municipal Corporation
Ahmednagar, Tq. and Dist. Ahmednagar.
2. Sayyad Wahab Umar
Age : 45 years, Occ : Business,
R/o. Juna Bazar Road, Infront of Nagar
Times, Ahmednagar, Tq. And Dist.
Ahmednagar.
3. Ansar Ismail Tamboli
Age : 41 years, Occ : Business,
R/o : Takali Kazi Tq. and Dist. Ahmednagar.
4. Ismail Buban bhai Tamboli
Age : 67 years, Occ : Business,
R/o Baba Bangali, Near Collector Office,
Ahmednagar Tq. and Dist. Ahmednagar.
...Respondent/Ori.Defendant

AND
WRIT PETITION NO. 1150 OF 2017

1. Abdul Gani Nawab Kureshi
Age : 45 years, Occ : Labour,
R/o 716, R/o Baba Bangali,
Near Collector Office, Ahmednagar
Tq. and Dist. Ahmednagar.
...Petitioner/Ori. Plaintiff

VERSUS

1. The Commissioner,
Ahmednagar Municipal Corporation
Ahmednagar, Tq. and Dist. Ahmednagar.
2. Sayyad Wahab Umar
Age : 45 years, Occ : Business,
R/o. Juna Bazar Road, Infront of Nagar
Times, Ahmednagar, Tq. And Dist.
Ahmednagar.
...Respondent/Ori.Defendant

...

Advocate for the Petitioner : Shri M. R. Sonwane
Advocate for Respondent No. 1 : Shri V. S. Bedre
Advocate for Respondent No.2 : Shri Shaikh M.A. Jahagirdar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th NOVEMBER, 2018.

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ORAL JUDGMENT :

1. By the consent of the parties, all these matters have been taken up together for a common hearing since the petitioners are aggrieved by identical orders passed in three different suits.

2. Considering the order that I am passing, I am not required to advert to the entire submissions of the learned Advocates for the respective sides.

3. There is no dispute that in the three suits pending before the Trial Court, these petitioners have titled the first defendant as the Commissioner, Ahmednagar Municipal Corporation, Ahmednagar. There is also no dispute that all these petitioners had been issued with notices for hearing and have suffered orders passed by the Deputy Commissioner, on behalf of the

Municipal Corporation, directing these petitioners to demolish their illegal structures.

4. Issue is that after these petitioners/plaintiffs filed their suits describing defendant No.1 as the Commissioner Ahmednagar Municipal Corporation, Ahmednagar, which obviously led to a meaning that they were aggrieved by the orders passed by the competent authority of the Municipal Corporation, the Corporation, however, has taken a stand in the second and the third petition concerning Regular Civil Suit Nos. 416/2014 and 417/2014 that the suits are untenable since they suffer from mis-joinder of parties.

5. In the above backdrop, the petitioners in order to cure a defect if any, pertaining to the description of the Corporation as a defendant, filed an application in each of these three suits seeking leave of the Trial Court to correct the description of the Corporation. As such, what is sought is that the description "The Commissioner, Municipal Corporation Ahmednagar" be corrected as "Municipal Corporation Ahmednagar through its Commissioner".

6. Shri Bedre learned Advocate appearing on behalf of the Corporation strenuously submits that since the Commissioner is made a party, the suit was not maintainable. However, it is conceded that the written statement has not been filed by the Commissioner in his personal capacity and he has actually defended the action of the Corporation in the said written statement. Even in these petitions before this Court, Shri Bedre is appearing, not on behalf of the Commissioner in his personal capacity, but on behalf of the Municipal Corporation.

7. I find that the respondents have made much ado about nothing in relation to the above stated aspect. Another argument canvassed by the respondent corporation and the other respondents in these matters is that if, at all the defect in the description of defendant No.1, is allowed to be cured the objections of the corporation would be nullified.

8. The contentions of the respondents recorded as above, are fallacious for two reasons. Firstly, that there cannot be a prohibition against a litigant from curing a defect in a suit

before the said defect leads to disastrous consequences. In short, a litigant, having made some error or mistake in a suit, cannot be precluded from correcting the said mistake and the law would not expect such a litigant to suffer drastic effects of such mistake. Secondly, to do complete justice, such a mistake could be corrected before it became too late. This Court had dealt with a similar issue in the matter of *Orion Ropes Pvt. Ltd. Through Factory Manager Vs. Yogesh Namdeo Mane and Ors.* 2011 III CLR 974, wherein after the management had raised objections on the maintainability of an ULP complaint pertaining to certain defects in the complaint and such defects were permitted by the Industrial Court to be cured, this Court dismissed the petition of the management and concluded that the law would not prohibit a litigant from correcting a mistake in the proceeding before it became too late.

9. In view of the above, I find that the Trial Court has taken a pedantic view in this matter. Hence, the impugned orders dated 28/11/2016 are quashed and set aside and applications Exhibit 47, 63 and 59 are allowed. These petitions are,

therefore, allowed in the above terms.

10. The petitioners shall forthwith correct the description of defendant No.1 Municipal Corporation within two weeks from today. Since the correction can be conveniently carried out in red ink, filing of freshly typed amended complaints is dispensed with.

11. Since all the parties have led evidence and the matters are now at the stage of advancing final arguments, all these litigating sides shall canvass their final arguments within four weeks from today.

12. It is made clear that since an inconsequential correction is permitted by these orders, there is no requirement of framing an additional issue or for allowing the parties to lead any evidence.

13. The Trial Court would, therefore, proceed to decide these three suits as expeditiously as possible and in any case, on or before 28/02/2019.

(RAVINDRA V. GHUGE, J.)

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