

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

WRIT PETITION NO.10853 OF 2016

Shivaji Rama Bhosale

.. Petitioner

Vs.

Damodar Shrimant Thite & Ors.

.. Respondents

Mr. Surel S.Shah for the petitioner.

Mr. Ajay A. Joshi for the respondents.

CORAM : A.K. MENON, J.

DATED : 19TH MARCH, 2018.

P.C. :

1. The learned counsel for the parties agree, considering the issue involved in this petition, that the petition can be disposed of finally at the stage of admission. In the circumstances, I issue Rule. Rule returnable forthwith. Respondents waive service.
2. The only challenge in this petition is to the order dated 21st January, 2016 passed on Application Exhibit 52 and order dated 20th April, 2017 passed on Application Exhibit 54. Exhibit 52 sought impleadment of five respondents in Appeal no.54 of 2014 on the basis that the said proposed respondents were necessary and proper parties since these five persons were shown as senior to the petitioner-appellant in the seniority list but who had inadvertently have been left

out from the array of respondents while filing the appeal. This application came to be rejected by order dated 21st January, 2016 on the ground that only the existing three respondents may be directly affected by the outcome of the appeal and that the proposed respondents were not necessary parties.

3. In Application under Exhibit 54, being an application seeking review of the order dated 21st January, 2016, the Court held that proposed respondents are in no way concerned with the lis in the appeal. Mr. Shah, the learned counsel for the petitioners submitted that inadvertently the proposed respondents were not impleaded and that even if he succeeds in the appeal, there is a possibility of the proposed respondents seniority being affected in the event of their being promoted in the interregnum. In the circumstances, he submitted that the proposed respondents were proper parties. Mr. Shah states that save and except, impleading the parties, no consequential amendments are being sought.
4. In response, the learned counsel for the respondents has supported the impugned orders on the basis that there is no cause of action that the appeal disposed of against the proposed respondents and that they are not necessary parties.
5. Having considered the submissions, the fact that the appeal is yet to be taken up for hearing for final disposal as also the fact that no evidence

has been led till date, I am of the view that no prejudice will be caused to the respondents, if the application at Exhibit 52 is allowed. Moreover, if the petitioner succeeds, and meanwhile if the proposed respondents or any of them are promoted, there is a possibility of multiplicity of litigation which can be avoided by impleading these parties at this stage.

6. In the circumstances, in my view, it is appropriate that the application for amendment be allowed. This petition must succeed and I pass the following order:-

- (i) Rule is made absolute in the above terms.
- (ii) Impugned orders dated 21st January, 2016 Exhibit 52 and order dated 20th April, 2016 Exhibit 54 are hereby quashed and set aside.
- (iii) Amendment sought vide Exhibit 52 is allowed.
- (iv) At the request of the learned counsel for both parties, in view of the superannuation of the petitioners, hearing of the Appeal no. 54 of 2014 is expedited.
- (v) Parties to act on an authenticated copy of this order.

(A.K. MENON,J.)