

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8775 OF 2018

Mitra Pariwar Co-operative
Housing Society Ltd.

...Petitioner

Versus

Dabur India Ltd.

...Respondent

....

Mr. Mayur Khandeparkar, a/w. Laxminarayan Shukla, Advocate for the
Petitioner.

Mr. Sandeep Parikh a/w. Jas Sanghavi & Durgaprasad Poojari i/b. PDS
Legal, for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 05th SEPTEMBER, 2018

P.C.

1. Heard Mr. Mayur Khandeparkar, learned counsel for the
petitioner and Mr. Sandeep Parikh, learned counsel for the respondent,
at length.

2. By this Petition under Article 227 of the Constitution of India,
the petitioner, hereinafter referred to as the 'plaintiff', has challenged
the order dated 6.7.2018 passed by the learned Judge, Court Room
No.37 of the Small Causes Court at Mumbai (Bandra Branch) below
Exhibit-15 in Obstructionist Notice No.13/2013. By that order, the
learned trial Judge permitted the plaintiff to amend the Obstructionist
Notice as per the Schedule except for substituting the respondent Dabur

India Limited with Fem Care Farma Limited. The respondent is ordered to be added as additional party in place of Fem Care Farma Limited. Along with such addition, further consequential amendment was also allowed and the amendment was ordered to be carried out within 14 days from the date of the order.

3. Rule. Mr.Parikh waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. The matter was heard at length yesterday and was adjourned till today so as to enable Mr. Parikh to obtain instructions from the respondent. Mr. Parikh, on instructions, submits that the respondent is agreeable for deletion of Fem Care Farma Limited and in its place impleading the respondent Dabur India Limited in the cause title of the Obstructionist Notice and for consequential amendment in terms of the Schedule. He further submits that the respondent Dabur India Limited, without prejudice to their rights and contentions, will maintain status quo and will not create third party interest in respect of the suit property till Wednesday, 10th October, 2018. The learned Counsel for the parties submit that the parties will appear before the trial Court on 10.9.2018 and for that purpose no fresh notice be issued to them.

5. In view thereof, by consent of the parties, the Petition is disposed of in the following terms :

- i. Impugned order dated 6.7.2018 passed by the learned trial Judge below Exhibit-15 in Obstructionist Notice No.13/2013 is set aside. Application Exhibit-15 is restored to the file of the learned trial Judge for deciding it afresh.
- ii. Fem Care Farma Limited stands deleted and in its place Dabur India Limited shall be impleaded in the cause title of the Obstructionist Notice. The petitioner is permitted to carry out consequential amendment in terms of the Schedule.
- iii. Statement made by the respondent that, without prejudice to their rights and contentions, they will maintain *status quo* in respect of the suit property and will not create third party interest till Wednesday, 10th October, 2018 is accepted in the form of an undertaking to this Court.
- iv. The parties agree that they will appear before the trial Court on 10.9.2018 and for that purpose fresh notice need not be issued to them. The learned trial Judge will fix suitable date for hearing of application Exhibit-15 and after hearing both sides will consider all the prayers except prayers clauses (a), (b) & (c), as prayer clause (a) is already granted by this Court.

- v. The learned trial Judge will decide the application Exhibit-15 on its own merits and uninfluenced by the statement made by the respondent about maintaining *status quo* and not creating third party interest in respect of the suit property.
- vi. All contentions of the parties on merits are expressly kept open.
- vii. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

Pradipkumar
Prakashrao
Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date:
2018.09.06
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