

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

WRIT PETITION NO.7065/2016

Archangel health Care,
 Solutions Pvt. Ltd., through its
 Chief Executive Officer,
 Dr. Jagdish S/o Vishnuji Talmale,
 aged about 31 Yrs., Occu. Medical
 Practitioner, R/o 318, Ganesh Nagar,
 Nagpur 440 009.

..Petitioner.

..Vs..

1. The Chief Manager,
 Bank of India, Itwari Branch,
 Shahid Chowk, Itwari,
 Nagpur - 440 002.
2. Zonal Manager,
 Bank of India, Zonal Office,
 Kingsway, Nagpur.
3. Bank of India, Star House,
 C-5, "G" Block, Bandra-Kurla
 Complex, Bandra (East),
 Mumbai - 400 051.
4. Mr. P.K. Gupta,
 aged about not known but Major,
 presently working as Chief Manager,
 Bank of India, Itwari Branch,
 Shahid Chowk, Itwari,
 Nagpur - 440 002.

..Respondents.

 Shri P.D. Sharma, Advocate for the petitioner.
 Shri R.S. Kale, Advocate for respondent Nos.1 to 4.

CORAM : Z.A. HAQ, J.

DATE : 15.1.2018.

ORAL JUDGMENT

1. Heard Shri P.D. Sharma, Advocate for the petitioner and Shri R.S.

Kale, Advocate for respondent Nos.1 to 4.

2. The petitioner / original plaintiff has challenged the order passed by the trial Court by which the application (Exh. No.15) filed by the defendant No.4 praying that his name be deleted from the array of parties in the civil suit, is allowed.

3. The plaintiff has filed civil suit praying for decree for recovery of amount which according to the plaintiff is towards the compensation. The plaintiff impleaded the defendant No.4 in the civil suit. In this civil suit, the defendant No.4 filed the application (Exh. No.15) contending that the plaintiff cannot implead him as defendant in his personal capacity and, therefore, it is necessary that the plaintiff be directed to delete his name from the array of defendants. The learned trial Judge has recorded that on reading of the plaint it cannot be said that the defendant No.4 was having any grudge against the plaintiff in his personal capacity and whatever the defendant No.4 has done, is in his official capacity while performing his official duties. With these findings, the learned trial Judge recorded that the impledment of defendant No.4 is unwarranted.

4. After hearing the learned Advocates for the respective parties and examining the impugned order, I find that the trial Judge has committed an

error of jurisdiction by recording a finding that the plaintiff has not been able to make out from the pleadings in the plaint that defendant No.4 was having grudge against the plaintiff and that the defendant No.4 has not acted in his official capacity. The proper course for the trial Court was to consider the contention of the defendant No.4 by framing issue / issues and considering the issue / issues along with other issues while deciding the civil suit so that the respective parties get opportunity to prove their case.

5. In view of the above, I find that the impugned order is unsustainable.

6. Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The application (Exh. No.15) is dismissed.
- (iii) It is submitted that the defendant No.4 in his written statement has raised the defence, as raised in the application. If it is so, the defence raised by the defendant No.4 shall be considered by the trial Court by framing issue / issues and deciding that issue / issues alongwith other issues on merits after the parties are given opportunity to lead evidence and cross-examine.

The writ petition is **disposed** in the above terms.

In the circumstances, the parties to bear their own costs.

C.A.W. NO.1124/2017

In view of disposal of writ petition, this application for modification of interim order does not survive and is **disposed** accordingly. No costs.

JUDGE

Tambaskar.