

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1460 OF 2019

Wondervalue Realty Developers Pvt. Ltd. ...Petitioner
vs.
Prakash Krushna Naik and Ors. ...Respondents

Mr. D.V. Deokar a/w. Mr. Pinakin Modi I/b. M/s. Parimal K Shroff & Co., for the Petitioner
Ms. Naseem Patrawala I/b. Patrawala & Co., for Respondent No. 1.
Ms. Devyani Deshmukh a/w. Ms. Soniya Putta I/b. M/s. Solomon & Co., for Respondent No. 3.
Mr. Akshay Shinde, for Respondent No. 4
Ms. Sheetal Bane, for Respondent No. 5.
Mr. Hiren Shah I/b. Prakash & Co., for Respdt. Nos. 7(a) to 7(c).

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

ORAL JUDGMENT

. Heard Mr. Deokar, learned counsel for the Petitioner and Ms. Naseem Patrawala, learned counsel for Respondent No. 1 and Ms. Soniya Putta, learned counsel for Respondent No. 3.

2. The learned counsel for the Petitioner states that all the Respondents have been duly served in this Petition. For the purpose of the order which is proposed to be made, the most relevant party is Respondent No. 1 who has by the impugned order been permitted to be transposed as the Plaintiff in Suit No. 4479 of 2011 in place of original Plaintiff who has been now ordered to be

transposed as one of the Defendant in the suit.

3. Mr. Deokar, learned counsel for the Petitioner submits that the impugned order is in excess of jurisdiction because the suit in the present case was instituted by the Plaintiff not only in his personal capacity but also in representative capacity by complying procedure prescribed in Order I Rule 8 of Code of Civil Procedure (CPC). He submits that the original Plaintiff in the suit could not have been displaced in this manner and in this he is supported by Ms. Soniya Putta, learned counsel for Respondent No. 3 that the transposition of Respondent No. 1 will not entitle Respondent No. 1 to continue with the suit in representative capacity. Mr. Deokar submits that before such leave is granted, it is necessary to ascertain whether 285 slum dwellers whom the Respondent No. 1 purports to represents, consent for such representation. For these reasons. Mr. Deokar and Ms. Putta submit that the impugned order warrants interference.

4. The record indicates that the suit was instituted by the original Plaintiff not only in his personal capacity but also in representative capacity by complying the provision under Order I

Rule 8 of CPC. Thereafter, it appears that the original Plaintiff was no longer hold the same part in the society, which he was holding at the time of institution of the suit. The Respondent No. 1 therefore applied for substitution in place of original Plaintiff since it appears that the original Plaintiff was no longer interested in and in any case was no longer perusing the suit diligently.

5. The record and in particular paragraph 9 of the impugned order, indicates that the original Plaintiff had no objection whatsoever to his replacement by Respondent No. 1. This is also evident from the fact that original Plaintiff has not chosen to challenge the impugned order. Even otherwise, the material on record makes it clear that the original Plaintiff had no difficulties in so far as the Respondent No. 1 becoming the Plaintiff in the suit.

6. This Petition has been instituted by the Defendant in the suit and the same is supported by Ms. Soniya Putta who also represents some other Defendants. Obviously, the Petitioner and other Defendants cannot take cudgels on behalf of the original Plaintiff, particularly when the original Plaintiff has no difficulty whatsoever to his replacement by Respondent No. 1. Therefore, on

such ground, there is no case made out to interfere in the impugned order.

7. However, the second issue is whether the Respondent No. 1 by virtue of the impugned order can now insist upon prosecuting the suit not just in his personal capacity but also in representative capacity without compliance with procedure under Order I Rule 8 of CPC. Here, Mr. Deokar and Ms. Putta are on stronger weight. In fact, Ms. Naseem Patrawala, learned counsel for Respondent No. 1 also does not dispute that if the Respondent No. 1 wants to pursue the suit in representative capacity then, Respondent No. 1 will have to follow the procedure under Order I Rule 8 of CPC afresh.

8. Accordingly, though the impugned order is not interfered with, it is made clear that as things stand, the Respondent No. 1 can pursue the suit only in the individual capacity. However, if the Respondent No. 1 wishes to pursue the suit in the representative capacity, the Respondent No. 1 will have to follow the procedure prescribed under Order I Rule 8 of CPC. Ms. Patrawala states that Respondent No. 1 will take steps to follow the procedure under Order I Rule 8 within a period of eight weeks from today. This

statement is accepted.

9. With the aforesaid clarification and observations, this Petition is disposed of.

10. There shall be no order as to costs.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)