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Court Room No.7 of the Court of Small Causes at Mumbai below Exhibit 26 in R.A.E. & R Suit No.620/932 of 2010. By that order, the learned trial Judge rejected the application made by W.I.C.C to delete it's name and replace it with that of M/s. Jeevak Consultants LLP.

5. Rule. Mr. Goel waives service on behalf of respondent No.1. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable and the Petition is taken up for final hearing.

6. In support of this Petition, Mr. Gada submitted that by registered deed of conveyance dated 23rd January, 2018, W.I.C.C have sold, transferred and conveyed the suit building to M/s. Jeevak Consultants LLP for a consideration. In view thereof, W.I.C.C took out application Exhibit 26 on 28th June, 2018 for deleting it's name and adding name of M/s. Jeevak Consultants LLP in their place. Respondent No.1 filed affidavit in reply dated 3rd September, 2018 opposing that application. Respondent No.1 contended that the application made by W.I.C.C is not maintainable and is bad in law. The reliefs sought for, for substitution cannot be granted. Respondent No.1 denied that Rahul K. Mehta who verified the application and affirmed the affidavit in support thereto is the authorized representative of W.I.C.C. It was contended that the application did not disclose as to whether W.I.C.C have authorized Rahul K. Mehta to verify the application and/or to affirm the affidavit in support thereof. It was also contended that application does not disclose any documents on the basis of which Rahul K. Mehta is claiming to be authorized representative of W.I.C.C. In short, respondent No.1 objected to the authority of Mr. Rahul K. Mehta to file application and/or affirm the same.

7. Respondent No.1 further contended as W.I.C.C had sold the suit property on 23rd January, 2018 to M/s. Jeevak Consultancy LLP, they are no longer the owners and landlords of the suit property and hence, they could not have legally and validly preferred application as they had lost title to the suit property. It was also contended that assignees of the property M/s. Jeevak Consultancy LLP have not preferred any application to continue the suit against the defendant as contemplated under the provisions of the Code of Civil Procedure, 1908 (for short 'C.P.C'). In absence of such application, the assignees cannot be substituted and/or be replaced in place of W.I.C.C. As W.I.C.C are divested of their right, title and interest in the suit property, the application deserves to be dismissed.

8. In support of this Petition, Mr. Gada submitted that the learned trial Judge observed in paragraph 6 that admittedly the plaintiff has by a Deed of Conveyance dated 23.01.2018 sold transferred and conveyed the suit building to M/s. Jeevak Consultancy LLP, for a consideration, in such circumstances, it is of the bounden duty of M/s. Jeevak Consultancy LLP to prefer an application to add their name as a party to the proceeding. The learned trial Judge also held that Rahul K. Mehta has no locus to prefer such application without any authority. He submitted that the said finding is in the teeth of the Order-1, Rule-10 (2) of the C.P.C. He, therefore, submitted that the impugned order deserves to be set aside. The Petition requires consideration.

9. On the other hand, Mr. Goyal supported the impugned order. He submitted that Order-XXII, Rule-10 deals with procedure in case of assignment before final order in suit. He submitted that sub-rule (1) thereof lays down that in other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or

against the person to or upon entitling the person to or upon whom such interest has come or devolved. In the present case, according to W.I.C.C, they have assigned their, right, title and interest in favour of M/s. Jeevak Consultancy LLP, namely assignee. The assignee ought to have filed application in terms of Order-XXII, Rule-10 (1) of the C.P.C for joining them as plaintiffs in the suit. As the application is not made by the assignee and is made by assignor, no case is made out for interfering with the impugned order.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Order-1, Rule-10 (2) of the C.P.C reads thus;

“10.Suit in name of wrong plaintiff._

(1)....

(2)Court may strike out or add parties._

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added”.

11. A perusal of sub-rule (2) shows that the Court is invested with power to strike out name of the plaintiff or defendant as the case may be with or without application and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

12. Thus, even in the absence of application, the Court has ample power under sub-rule (2) of Order-1, Rule-10 to strike out name of any person who appears to the Court have been improperly joined to and add the person who ought to be joined whether as the plaintiff or the defendant. In my opinion, the approach of the learned Judge was hyper technical. The trial Court also did not consider the provisions of Order-1, Rule-10 (2) of the C.P.C. Once, the trial Court recorded a finding that it was admitted position that W.I.C.C by Deed of Conveyance Deed dated 23rd January, 2018 have sold, transferred and conveyed the suit building to M/s. Jeevak Consultancy LLP, for a consideration, it ought to have allowed the application. Even if there was no application, either from W.I.C.C being assignee or M/s. Jeevak Consultancy LLP assignor, the Court has ample power to delete name of W.I.C.C and in its place bring on record M/s. Jeevak Consultancy LLP, as plaintiffs. Hence, the impugned order is liable to be set aside and the application at Exhibit 26 deserves to be allowed. Rule is accordingly made absolute with no order as to costs.

[R.G. KETKAR, J.]