

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2253 OF 2019

Mohd. Mushtaquim Khan .. Petitioner
vs.
Sabahat I. Momin and anr. .. Respondents

Mr. J.G. Reddy (Aradwad) for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 8 APRIL 2019.

P.C. :-

- 1] Heard Mr. J.G. Reddy for the petitioner.
- 2] The challenge in this petition is to the order dated 19th November 2018 by which the petitioner has been ordered to be impleaded as a defendant in Suit No. 7366 of 2005.
- 3] The impugned order came to be made on a Chamber Summons taken out by the plaintiff in the suit seeking amendment of plaint and impleadment of petitioner.
- 4] Mr Reddy, learned counsel for the petitioner, submits that the suit is for dissolution of partnership and accounts as between the plaintiff and the defendant, i.e., respondent Nos.1 and 2 to the petition. He submits that in such a suit,

the petitioner is neither a necessary nor a proper party. He submits that the suit premises were sold to the petitioner by the Sale Deed dated 15th September 2005, i.e., prior to the institution of suit. He points out that this fact was very well known to the plaintiff. He submits that the plaintiff was by no means diligent and therefore the amendment was not required to be allowed. He submits that the reliefs which the plaintiff seeks by way of amendment are *ex facie* barred by law of limitation as well. He submits that all these aspects have not been considered by learned Trial Judge, the impugned order warrants interference.

5] Although, this is a suit for dissolution and accounts, one of the issues involved in this suit is whether the suit property is a property of the Firm or not. The reliefs are accordingly, prayed in respect of the suit property, in which, the petitioner claims the right, title and interest.

6] The learned Trial Judge has discussed all the contentions now sought to be raised by Mr. Reddy in some details. From the perusal of the impugned order, it cannot be

said that the discretion has been exercised in unreasonable manner in this matter. Ultimately, the plaintiff is a *dominus lithus* in such matters. If, the plaintiff, could, at the initial stage itself have impleaded the petitioner as a defendant to the suit, then there can be no objection to the impleadment of the petitioner to the suit at a later stage, by way of amendment/joinder of parties.

7] Insofar as the issue of limitation is concerned, such issue can always be kept open. Accordingly, merely because the petitioner is ordered to be now impleaded as a party to the suit, that does not mean that the issue of limitation stands decided against the petitioner or in favour of the original plaintiff.

8] Accordingly, though this petition is being dismissed, it is clarified that the issue of limitation is to be kept open and to be decided along with all other issues which arise in the suit.

9] With clarification as aforesaid, this petition is disposed of. There shall be no order as to costs.

10] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)