

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.4750 OF 2019
AND
WRIT PETITION (ST.) NO.4751 OF 2019

Ivory Pvt. Ltd. ... Petitioner
Vs.
Ashok Laxman Pendse and others ... Respondents

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Sameer Chitnis and Ms Madhura Kulkarni i/b. Chitnis and Company for Petitioner in both the Petitions.

Mr. Jaydeep Deo for Respondent No.1 in both the Petitions.

CORAM : R. G. KETKAR, J.
DATE : MARCH 18, 2019

P.C. :

Heard Mr. Godbole, learned Senior Counsel for the petitioner and Mr. Bhanage, learned Counsel for the respondents in both the Petitions.

2. These Petitions take exception to the orders dated 04.12.2018 passed by the learned trial Judge rejecting the applications made by the petitioner-plaintiff seeking permission to withdraw the amendment applications and file new amendment application.

3. In support of Writ Petition (St.) No.4751 of 2019, Mr. Godbole invited my attention to the prayers made in application exhibit-52 made in R.A.E.&R.Suit No.351/662 of 2008. The plaintiff filed application under Order XXII, Rule 4(4) to exempt the plaintiff from the necessity of substituting the heirs and legal representatives of the deceased defendant No.1-G - Smita Sharad Mehndale. Prayers made thereto read thus,

“a) Exercise powers under the provisions of Order XXII, Rule 4(4) of the Code of Civil Procedure, 1908 and to

exempt the plaintiffs from the necessity of substituting the heirs and legal representatives of the deceased defendant No.1-G in the above suit.

b. For such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

4. In support of Writ Petition (St.) No.4750 of 2019, Mr. Godbole invited my attention to the prayers made in application exhibit-18 in R.A.E.& R. Suit No.1813 of 2014 under Order XXII, Rule 4(4) to exempt the plaintiff from the necessity of substituting the heirs and legal representatives of the deceased defendant No.6 - Smita Sharad Mehandle. Prayers made thereto read thus,

“a) Exercise powers under the provisions of Order XXII, Rule 4(4) of the Code of Civil Procedure, 1908 and to exempt the plaintiffs from the necessity of substituting the heirs and legal representatives of the deceased defendant No.6 in the above suit.

b. For such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

5. Mr. Godbole submitted that both the applications, exhibits-18 and 52 were rejected by orders dated 29.06.2017. Aggrieved by these decisions, plaintiff has instituted Writ Petitions No.9208 of 2017 and 9170 of 2017. These Petitions were allowed by this Court (Coram: G. S. Patel, J.) by order dated 08.03.2018. He submitted that this Court held that the Suits will proceed without, respectively, the 6th defendant and defendant No.1-G, namely, Smita Sharad Mehandle. In other words, he submitted that the effect of the order of this Court is to grant exemption to the plaintiff from bringing the legal representatives of defendant No.6 and defendant No.1-G, namely, Smita Sharad Mehandle. He, therefore, submitted that he may be permitted to withdraw these Petitions with liberty to move the same Court for clarification / modification of order

dated 08.03.2018.

6. In view thereof, on the motion made by Mr. Godbole, Petitions are allowed to be withdrawn with liberty as prayed for. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab