

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6476 OF 2015

Janardhan Abaji Lamkane and Anr. ...Petitioners
vs.
Kisan Machhindra More and Anr. ...Respondents

Mr. Vishwanath Talkute, for the Petitioners
Mr. A.A. Joshi, for Respondent No. 1.
Mr. Prabhoo Bhosale i/b. Mr. V.S. Kapse, for Respondent No. 2.

CORAM : M. S. SONAK, J.

DATE : MARCH 18, 2019

P.C.

. Heard Mr. Talkute, learned counsel for the Petitioners
and Mr. Joshi, learned counsel for Respondent No. 1.

2. The challenge in this Petition is to the order dated 4th
February, 2015 by which the trial Judge has permitted
impleadment of Respondent No. 1 as Defendant in the suit. The
record indicate that Respondent No. 1 is a transferee *Pendente lite*
from Respondent No. 2. Mr. Talkute points out that the transfer in
the present case took place in the teeth of status quo order granted
by the Court thereby restraining Respondent No. 2 from effecting
any transfer. On account of disobedience of the status quo order in
fact the defence of Respondent No. 2 has been struck off.

3. Mr. Joshi, learned counsel for Respondent No. 1 further relies upon the decision of the Hon'ble Apex Court in the case of ***Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Ors. (2013) 5 Supreme Court Cases 397*** to submit that the transferee *Pendente lite* can also be impleaded as Defendant in a suit for specific performance.

4. In ***Thomson Press*** (supra) it does appear that a transferee *Pendente lite* was permitted to be impleaded as Defendant in the suit for specific performance. However, at paragraph 45 the Hon'ble Supreme Court issued the following clarification:

Before parting with the order, it is clarified that the appellant after impleadment as party-defendant shall be permitted to take all such defences which are available to the vendor Sawhneys' as the appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit.

5. In the present case, the vendor of the Respondent No. 1 i.e. Respondent No.2 has already suffered order of striking off his defence. Obviously, the Respondent No. 1 in the present case, cannot circumvent the effect of such order and on such basis seek any leave to file written statement or otherwise raise any defence in the suit. Mr. Bhosale, accepts this position. He further submits

that just as Respondent No. 2 notwithstanding the striking off his defence, is entitled to cross examine the Plaintiff or the Plaintiff's witness, the same rights may also be reserved in favour of Respondent No. 1. This submission can be accepted.

6. Accordingly, though the impugned order is not interfered with, it is clarified that Respondent No. 1 will stand in the same position as Respondent No. 2 when it comes to his defence in the suit. This means that Respondent No. 1 will not be entitled to file any written statement or raise any defence. However, Respondent No. 1 just like Respondent No. 2 will be entitled to cross examine the Plaintiff or Plaintiff's witnesses when evidence is lead by and on behalf of the Plaintiff.

7. The impugned order is therefore modified so as to incorporate the aforesaid clarification.

8. The Petition is therefore disposed of in the aforesaid terms.

9. There shall be no order as to costs.

(M. S. SONAK, J.)