

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
REVIEW PETITION NO. 57 OF 2019  
IN  
WRIT PETITION NO. 1655 OF 2016

M/s. Lund and Blockley Opticians  
and anr.

.. Petitioners

vs.

The David Sasson Library and  
Reading Room and ors.

.. Respondents

Mr. P.S. Dani, Sr. Advocate a/w. Ms Shlesha Sheth a/w. Ms  
Rabab Ghagharia I/b FZB Associates for the Petitioner.  
Mr. Prabhakar K. Shetty for Respondent No.1

**CORAM : R. G. KETKAR, J.**

**DATE : 6<sup>th</sup> AUGUST 2019.**

**P.C. :-**

1] Heard Mr. P.S. Dani, learned Senior Counsel for the  
petitioners and Mr. P.K. Shetty, learned Counsel for  
respondent No.1 at length.

2] By this petition under Section 114 read with Order  
XLVII Rule 1 of Code of Civil Procedure, 1908 (for short  
“CPC”), the petitioners, hereinafter referred to as defendant  
Nos.2 and 5, have sought for review of the order dated 18<sup>th</sup>  
February 2019 passed in Writ Petition No. 1655 of 2016.

3] In support of this petition, Mr. Dani has invited my attention to paragraphs 11 and 12 of the order dated 18<sup>th</sup> February 2019 as also paragraphs 1 and 2 of the further additional written statement of September 2015 of defendant Nos.2 and 5. He submitted that in paragraph 1 of the further additional written statement specific contention was raised as regards defects in the original plaint in the absence of impleading necessary parties to the suit in the plaint and the same cannot be cured by any subsequent amendment.

4] In paragraph 2, defendant Nos.2 and 5 contended that the persons impleaded as Trustees of the plaintiff trust namely plaintiff Nos.2 to 16 of the plaint were elected as Trustees for the first time in the year 2013 for the period 2013 to 2015 and/or that some of them were members of the previous Managing Committee for the period 2011 to 2015. The impleadment of plaintiff Nos.2 to 16 cannot have retrospective effect curing the original invalidity of the plaint. He submitted that unfortunately, paragraph 1 and 2 of further additional written statement were not brought to the

notice of this Court at the time of hearing on 18<sup>th</sup> February 2019.

5] I do not find any merit in any of the submissions. The suit is instituted by respondent No.1- plaintiff in the year 1986. Even accepting the case made out by defendant Nos.2 and 5 in paragraph 1 and 2 of the further additional written statement that the plaintiff did not implead Trustees as plaintiff Nos.2 to 16 at the time of filing of the suit, nevertheless, this defect, if any, was cured. That apart, in paragraph 12 of the order dated 20<sup>th</sup> July 2015 passed by learned Trial Judge below Exhibit-102 in R.A.E. Suit No. 408/1161 of 1986, the learned Trial Judge has observed that the suit was filed by the then President Mr. M.B. Keni. In view thereof, it cannot be said that there is any error apparent on the face of record so as to invoke powers under Section 114 read with with Order XLVII Rule 1 of CPC. Hence, the Review Petition fails and the same is dismissed.

**(R. G. KETKAR, J.)**