

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13462 OF 2018

M/s. M.K. Enterprises .. Petitioner
vs.
Bamubai M. Mhatre and ors. .. Respondents

Mr. Bhushan Walimbe for the Petitioner.
Mr. Nishant Tripathi I/b M. Tripathi and Co. for Respondent
No.9

CORAM : M. S. SONAK, J.
DATE : 26 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. Walimbe for the petitioner and Mr. Nishant Tripathi for respondent No.9, who is contesting party.

2] The challenge in this petition is to the order dated 6th January 2017 by which learned Trial Judge has directed the petitioner to implead respondent No.9 as a party to the suit.

3] Mr. Walimbe learned counsel for the petitioner, submits that the application for impleadment made by respondent No.9 was neither signed nor supported by any affidavit. He submits that the petitioner who is the plaintiff is *dominus litus* and since the petitioner had claimed no relief against respondent No.9, there could be no directions for

impleadment of respondent No.9. He submits that the petitioner has an agreement with defendant Nos.1 to 7 in the suit and the petitioner seeks specific performance of the said agreement. Mr. Walimbe submitted that to such a suit, there is no question of respondent No.9 seeking impleadment. For all these reasons, Mr. Walimbe submits that the impugned order warrants interference.

4] Mr. Walimbe also points out that in paragraph 9 of the impugned order, learned Trial Judge has almost concluded that respondent No.9 appears to have some rights and interests in the suit property. He submits that even this observation is totally incorrect and will occasion severe prejudice to the petitioner.

5] Mr. Tripathi, learned counsel for respondent No.9, defends the impugned order on the basis of reasoning reflected therein. He points out that respondent No.9 also had an agreement with defendant Nos.1 to 7, for which respondent No.9 had to institute a suit for specific performance. He submits that the suit was ultimately

decreed. He submits that the agreement which the petitioner claims is subsequent to the decree. He therefore, submits that respondent No.9 is a necessary party and there is no jurisdictional error in the impugned order.

6] The rival contentions now fall for determination.

7] It is true, as contended by Mr. Walimbe that the plaintiff is a *dominus litus* and can therefore, not be forced to sue some party against whom he claims no relief. However, this does not mean that a necessary or a proper party can never seek impleadment in a suit after satisfying the Court that such a party is indeed necessary party or would be prejudicially affected in case, any order or decree is made in the suit in-question.

8] In the present case, the record at least *prima facie* indicates that there was a consent decree in between defendant Nos.1 to 7 and respondent No.9 herein. In effect therefore, the petitioner virtually seeks to affect the consent decree on basis of which respondent No.9 claims some right

and interest. Learned counsel for respondent No.9 has submitted that in fact, the entire suit though instituted against defendant Nos.1 to 7 will only affect respondent No.9, if decreed. He points out that in fact some orders have been obtained in the suit, which already affecting the execution proceedings instituted by respondent No.9.

9] According to me, there is no error in the view taken by learned Trial Judge that respondent No.9 is indeed a necessary party or in any case proper party to the suit. In the facts of the present case, it cannot be said that any decree or orders that will be made in the suit will not prejudicially affect respondent No.9. On this ground, there is no case made out to interfere with the impugned order.

10] In paragraph 9, learned Trial Judge has only observed that it appears that respondent No.9 has rights and interest in the suit property. This observation is only made in the context of deciding the application under Order 1 Rule 10 of CPC and in that sense, this observation can never be treated as a conclusive. Ultimately, it is for the parties to establish

their rights and interests, if any, in the course of trial. With this clarification, the apprehension expressed by Mr. Walimbe need not survive.

11] Mr. Walimbe submits that as a consequence of directions to impleadment of respondent No.9, the petitioner may be granted liberty to amend the plaint so as to make necessary averments concerning respondent No.9. Normally, there should be no difficulty in considering such a request, no doubt, subject to whatever legitimate objections other parties may have. However, presently, the other respondents are not before me. Therefore, at this stage, all that can be observed is that the petitioner will be at liberty to take out an application for seeking leave to amend the plaint. If such application is taken out, there is no doubt the same will be considered by learned Trial Judge, on its own merits and in accordance with law.

12] It is made clear that this Court has not made any observations on merits of *inter se* disputes between the

parties and all contentions of all parties are therefore, kept open for determination by learned Trial Judge.

13] The time limit for carrying out amendment, if the amendment is already not carried out, is extended by a period of six weeks from today.

14] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

15] All concerned to act on the basis of authenticated copy of this order. order

(M. S. SONAK, J.)