

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4713 OF 2015

1. Smt. Harshaben Bharatbhai Raicha,)
Aged about 55 years, Indian Inhabitant)
2. Ms. Darshita Bharatbhai Raicha)
Aged about 30 years, Indian Inhabitant)
3. Ms. Sharadha Bharatbhai Raicha)
Aged about 28 years, Indian Inhabitant)
4. Ms. Priyanka Bharatbhai Raicha)
Aged about 24 years, Indian Inhabitant)
5. Ms. Vishwa Bharatbhai Raicha)
Aged about 20 years, Indian Inhabitant)

All above residing at 601/B, Pooja Tower,)
Thunkar Pada, Kalyan (W), Dist.: Thane)..Petitioners

V/s.

1. Shri. Narendra Narayan Mojindra,)
Age : 53, Occu – Business,)
R/o.: 106, Ambika Bhavan,)
Kopar Road, Near Bhavani Temple)
Dombivli (E).)
2. M/s. Ashapura Combines,)
A Partnership firm.)
3. Suresh R. Patel,)

Age : 42, Occu – Business)

4. Prashant S. Gogvale,)
Age – 35, Occ- Business,)
All 2 to 4, having Office at:)
F-2, Golden Park, Khadakpada,)
Kalyan (E).)..Respondents

Mr. Girish J. Paryani, Advocate for the Petitioners.
Mr. A.S. Khandeparkar a/w. Mr. A. Karandikar, S.N.
Raypurohit & Rohit Mahadik for the Respondents.

CORAM : N.J. JAMADAR, J.
DATED : 16th July, 2019.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.
2. This Petition assails the order passed by the learned 3rd Joint Civil Judge, Senior Division on 12.12.2013 on an application below Exhibit 27 in Special Civil Suit No. 118/2012, whereby the application of the Petitioners for impleadment as party Defendant in the suit instituted by Respondent No. 1 herein came to be rejected, and the

subsequent order dated 21.08.2014, whereby an application to review the said order of rejection dated 12.12.2013 also came to be rejected.

3. The petitioners claimed to be the legal representatives of Late Bharatbhai Raicha, who was admittedly a partner of the firm M/s.Chhatra Developers. The Respondent No.1 herein was also a partner of the said firm. The Respondent No.1 herein has instituted a suit bearing Special Civil Suit No. 118/2012 against the Respondent No. 2 to 4 herein for cancellation of the development agreement dated 17.12.2006 and supplementary agreement dated 21.10.2008, executed between the said firm M/s.Chhatra Developers and Respondent No. 2 to 4. The Petitioners claimed that Bharatbhai Raicha was an executor of the said agreement in the capacity of a partner of M/s. Chhatra Developers. After the death of Bharatbhai Raicha on 30.12.2008, in terms of deed of partnership, they were entitled to become partners of the said firm and succeed to

38% share of Bharatbhai Raicha in the said firm. The Petitioners thus preferred an application for impleading them as the Defendants to the said suit, making certain allegations against the Respondent No. 1 – Plaintiff. The learned Civil Judge, was persuaded to reject the said application principally on two grounds. Firstly, there was no clause in the partnership deed to the effect that the partnership firm would continue even after the death of one of the partners and the representatives of the deceased partner would become the partners of the said firm. Secondly, the partnership firm M/s. Chhatra Developers was duly represented in the said suit, and, therefore, the legal representatives of the deceased partner Bharatbhai Raicha were not necessary parties.

4. Prima facie, the learned Civil Judge seems to have proceeded on an incorrect factual premises. A copy of the deed of partnership is tendered on record. Clause No. 16 of the said partnership deed reads as under :-

“16 On the death of any of the Partners the Partnership shall not cease to exit but shall be carried on between the surviving Partners and the legal heirs of the deceased partner the share of the deceased partner being passed on to his legal heirs.”

5. From a bare perusal of the aforesaid clause, it becomes evident that the death of any partner would not lead to an automatic dissolution of the firm. It was to be carried on by the surviving partners and the legal heirs of the deceased partner. The share of the deceased partner was to devolve upon the legal heirs, to be admitted to the partnership.

6. Even the observations of the learned Civil Judge that the partnership firm M/s. Chhatra Developers was duly represented by the present partners of the said firm do not appear to be factually correct. On the own showing of Respondent No.1 – Plaintiff, the erstwhile partners retired from the partnership firm, M/s. Chhatra Developers and the character of the firm M/s. Chhatra Developers has changed from a partnership firm to a proprietary firm.

7. In the aforesaid view of the matter, since the learned Civil Judge has not independently examined the question as to whether the presence of the Petitioners is necessary for an effective and complete adjudication of the dispute and has proceeded on an incorrect factual premise, it would be necessary to quash and set aside the impugned orders and direct the learned Civil Judge to decide the application for impleadment, preferred by the Petitioners afresh after providing an opportunity of hearing to all the parties.

8. In view of the above, the Petition stands allowed in the following terms:

- (i) The impugned orders passed by the learned Civil Judge on the application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, dated 12.12.2013 and the review application, below Exhibit 35, dated 21.08.2014 stand quashed and set aside.

- (ii) The learned Civil Judge is directed to hear afresh the application preferred by the Petitioners under Order 1 Rule 10 of the Code of Civil Procedure and decide the same, in accordance with law, after providing an opportunity of hearing to all the parties.
- (iii) The learned Civil Judge shall decide the application as expeditiously as possible, preferably within a period of three months from the date of communication of the order.
- (iv) It is hereby made clear that this Court has not examined the matter of impleadment of the Petitioners as a necessary or proper party to the suit on merits. The learned Civil Judge, therefore, shall not be influenced by any of the observations made herein above.

9. Rule made absolute in above terms.

(N.J. JAMADAR, J.)