

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7247 OF 2019

Naresh Kulbhushan Kapur	]	Petitioner
Vs.		
Vinod Vishwanath Kapur and others.	]	Respondents

Mr. B.R. Dalal, Advocate for the Petitioner.
Mr. B.N. Poojari, Advocate for Respondents No.1 and 2.

CORAM : R.G. KETKAR, J.

DATE : 2nd AUGUST, 2019.

P.C.

Not on board. At the request of Mr. Dalal, taken up for admission.

2. Heard Mr. Dalal, learned Counsel for the petitioner and Mr. Poojari, learned Counsel for respondents No.1 and 2, at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'applicant' has challenged the order dated 29th November, 2013 passed by the learned trial Judge below Exhibit 14 and Exhibit 20 in R.A.E & R Suit No.428/690 of 2013 as also the order dated 29th September, 2018 passed by the Appellate Bench of the Court of Small Causes

at Mumbai in Revision Application No.337 of 2013. The learned trial Judge allowed application Exhibit 14 taken out by respondents No.1 and 2, hereinafter referred to as 'plaintiffs' for impleadment of the applicant as proposed defendant No.3 to the suit. The applicant took out application Exhibit 20 for impleading him as party plaintiff in the suit. The learned trial Judge rejected application Exhibit 20. By order dated 29th September, 2018, the Appellate Court dismissed the Revision Application.

4. The plaintiffs have instituted suit against respondents No.3 and 4, hereinafter referred to as 'defendants' for recovery of possession of Godown No.1 on the ground floor of the building known as "Kapur Mansion", situate at 10, Morland Road, Agripada (West), Mumbai- 400 011 (for short 'suit premises'). During pendency of the suit, the plaintiffs took out application Exhibit 14 on 10th June, 2013, inter alia, contending that the applicant did not come forward to join with the plaintiffs. The application is, therefore, made to implead the applicant as defendant No.3 in the suit. The applicant filed application Exhibit 20 on 22nd August, 2013, inter alia, contending that he is one of the co-owners. Application Exhibit 14 taken out by the plaintiffs falsely avers that the applicant did not come forward to join with the plaintiffs and, therefore, he should be made party defendant No.3 in the suit. The applicant is also interested in prosecuting the suit and is ready and willing to become the plaintiff. The applicant is paying property taxes to the Corporation. The applicant further contended that the plaintiffs impleaded Court Receiver, High Court, Bombay as party defendant No.2 without obtaining leave

from the High Court to sue the Court Receiver. If no leave is obtained to sue the Court Receiver, it amounts to contempt of Court. Reliance was placed on the decision of **Everest Coal Company Private Limited Vs. State of Bihar, AIR 1977 Supreme Court 2304**. The applicant, therefore, prayed for impleading him as plaintiff in the above suit. By the impugned orders, the Courts below have allowed application Exhibit 14 made by the plaintiffs and directed impleadment of the applicant as defendant No.3 and have rejected application Exhibit 20 made by the applicant for his impleadment as plaintiff in the suit.

5. In support of this Petition, Mr. Dalal has reiterated the submissions that were advanced before the Courts below. He has taken me through the application made by the plaintiffs for impleadment of the applicant as defendant No.3. He submitted that till date, no leave to sue Court Receiver is obtained from this Court. If the leave to sue Court Receiver is not obtained, it amounts to contempt of the Court and the suit is liable to be dismissed on that count. He submitted that the Appellate Court wrongly observed in paragraph 16 that though the applicant is one of the co-owners, as he is not receiving the rent at any point of time, he is not a landlord. He submitted that the applicant is ready and willing to co-operate with the plaintiffs in prosecuting the suit. He is also ready and willing to be represented by the Advocates appointed by the plaintiffs. He, therefore, submitted that application Exhibit 14 filed by the plaintiffs may be dismissed and the application made by applicant Exhibit 20 may be allowed.

6. On the other hand, Mr. Poojari supported the impugned orders. Mr. Poojari on behalf of the plaintiffs undertakes to obtain leave from this Court to sue the Court Receiver within two weeks from today by filing appropriate application. He has invited my attention to the finding recorded by the learned trial Judge in paragraphs 10 and 11 and submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the applicant is one of the co-owners of the suit property. It is also not in dispute that the Court Receiver, High Court, Bombay is impleaded as defendant No.2 and as on date, no leave to sue the Court Receiver is obtained from this Court. The plaintiffs have undertaken to obtain leave of the Court to sue the Court Receiver by filing appropriate application within two weeks from today. Undertaking is accepted. Even otherwise, in paragraph 14, the Appellate Court has noted the submission that the plaintiff is ready to seek necessary permission from the High Court to sue the Court Receiver/defendant No.2 during the course of trial which is permissible as per decision of the Apex Court in **Everest Coal Company Pvt. Ltd** (supra).

8. A perusal of the trial Court's order and in particular paragraphs 10 and 11 shows that the plaintiffs have come with the case that there is conflicting interest between them on one hand and the applicant on the other. If he is added as a plaintiff, it

will cause prejudice to the plaintiffs' interest. If the applicant is impleaded as defendant No.3 in the proceedings, he can watch on the proceedings of the suit. In paragraph 11, the learned trial Judge observed that in view of the decision of **Everest Coal Company Pvt. Ltd** (supra), the plaintiffs can obtain leave of the High Court to sue the Court Receiver even during pendency of the suit. In application Exhibit 20, the applicant has prayed for stay of the further proceedings of the suit and thus, the applicant who is not a party to the suit is interested in staying the suit.

9. For the reasons recorded in paragraphs 10 and 11 of the trial Court's order, I do not find that the trial Court committed any error in passing the impugned orders.

10. In so far as the Appellate Court's order is concerned, the Appellate Court observed in paragraph 19 that the applicant wants to appoint his own Advocate to plead his case. Thus, the plaintiffs and applicant cannot be allowed to be represented by different Advocates. For the first time in this Court, the applicant has expressed his willingness to be represented by the plaintiffs' Advocate. In so far as the finding recorded in paragraph 16 of the Appellate Court's order is concerned, in view of the fact that the applicant is one of the co-owners, it is not necessary to deal with finding recorded in paragraph 16.

11. Apart from that, it is well settled principle of law that the plaintiff is dominus litis, he cannot be compelled to implead any party in the suit contrary to his wishes. In view thereof, I do

not find that the Courts below committed any error in passing the impugned orders. Hence, the Petition fails and the same is dismissed.

12. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]