

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14136 OF 2018

Chandrakant Bapurao Dhawale and Anr. ... Petitioners
Vs.
Subhadra Vilasrao Kaware and Ors. ... Respondents

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Mr. Abhijeet A. Devkhile for petitioners.
Mr. Priyal G. Sarda for respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 24th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the parties.
2. The respondent No.1-plaintiff had filed a suit for declaration, injunction, cancellation of development agreement and power of attorney dated 17.8.2013. The said suit is filed against the defendant No.1 partnership firm. The defendant Nos.2 and 3 are stated to be the partners of this firm.
3. During the pendency of the suit an application was made by the petitioners-third party applicant for impleading them as defendants. The said application is rejected by the Trial Court on the ground that in so far as the change of the constitution of the firm is concerned, nothing has been brought on record to

show that any intimation is given to the Registrar of firm and entry to that effect is made in the record maintained by register of firm to indicate as to who are the existing partners and who are the retired partners.

4. Learned counsel for the petitioners invited my attention to the document which is at page 75 of the paper book which is a Notice of Change of Constitution or Dissolution of Firm. In the said notice, the petitioner Nos.1 and 2 third parties are shown to be the partners and the date of joining is 17.8.2016. Learned counsel for the petitioners submits that inadvertently this document could not be brought to the notice of the Trial Court.

5. Learned counsel for respondent No.1 on the other hand supported the impugned order. He would submit that the document which is at page 75 of the paper book could not be placed before the Trial Court and therefore if on the basis of materials available the Trial Court has rejected the application made by the petitioners under Order I Rule 10 of the Code of Civil Procedure for amendment, the said order does not call for any interference.

6. Heard. It is true that the document which is at page 75 of the paper book in the nature of notice of change of constitution of the partnership firm was not before the Trial Court. According to the learned counsel for the petitioners, the same could not be brought on record inadvertently. On the basis of the materials, the Trial Court rejected the application. However, instead of sending the matter back to the Trial Court for reconsideration of the application below Exhibit 36, since the document indicating that there is a change in the constitution of the partnership firm and that the partners (petitioners) are having share in the partnership firm is on record, the present petition can be allowed. The respondent No.1 however needs to be compensated with cost.

7. Subject to cost of Rs.10,000/- to be paid by the petitioners to the respondent No.1 within a period of four weeks from today the petition is allowed. Application Exhibit 36 stands allowed. Necessary amendments to be carried out within a period of two weeks after the payment of cost. Learned counsel for respondent No.1 has made a grievance that the petitioners are

purposely trying to delay the proceedings. Learned counsel for petitioners assures that they will co-operate with the Trial Court in expeditious disposal of the suit.

(M. S. KARNIK, J.)