

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4975 OF 2019

(CHANDRAKANT RAMDASJI SHAHARE...VS.. M/S. SUNNY CONSTRUCTIONS & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Harish Dangre, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JULY 22, 2019.

Heard.

Defendant No.1 has challenged two orders in this
petition:

- (i) The order by which the application (Exh.67) filed by the plaintiff seeking permission to amend the plaint and to substitute the name of the partner of the plaintiff firm is allowed;
- (ii) The order by which the application (Exh.60) filed by the defendant No.1 is dismissed.

In the civil suit filed by the respondent No.1/ plaintiff, the defendant No.1 had filed application (Exh.60) contending that the civil suit was filed in 2014 on behalf of the firm through its Managing Partner Shri Sunil Mendhe, however, Shri Sunil Mendhe has resigned from the partnership on 27th October 2016 and therefore, he cannot represent the partnership firm and suit has to be dismissed. After the defendant No.1 filed application (Exh.60), an application (Exh.67) came to be filed on behalf of the plaintiff

praying that the plaintiff be permitted to amend the plaint and to show that the plaintiff firm is represented by Sau. Shubhangi Mendhe, another partner of the firm. The trial Court has allowed the application (Exh.67) and the application (Exh.60) is dismissed.

After considering the controversy, I find that the trial Court has not committed any illegality or error of jurisdiction by permitting the plaintiff to amend the plaint as per the application (Exh.67). Consequently, dismissal of the application (Exh.60) also cannot be faulted with.

At the time of hearing of this petition, the learned Advocate for the petitioner/ defendant No.1 contended that the partnership firm is not legal entity and therefore, unless all the partners are impeladed as plaintiffs, civil suit is not maintainable.

I find that this issue was not raised by the defendant No.1 at the time of consideration of the applications (Exh.60 and Exh.67), hence, it would not be proper for this Court to consider this submission in this petition. This issue is open for consideration by the trial Court at appropriate stage.

The petition is **dismissed**. No costs.

JUDGE