

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

Civil Application No.1583/2019

in

Writ Petition No.109/2015

Rakesh Maria Applicant

State of Maharashtra & Ors. Petitioners

Vs.

Vinita Ashok Kamte & Ors. Respondents

Mr. A. Y. Sakhare, Senior Advocate a/w. Joel Carlos a/w.
Virendra Pereira and Mr. Jimish Shah I/b. Divya Shah
Associates for the Applicant

Mr. S. H. Kankal, AGP for the Petitioners

Mr. Manish R. Bohra a/w. S. b. Shetye for Respondent No.1.

Mr. Sashi Kumar N. Nair a/w. Reshma Kurle for Respondent
No.2.

Mr. Vinayak V. Katti I/b. Vikas S. Singh for Respondent No.3
and 4.

**CORAM: K.K.TATED &
SARANG V. KOTWAL,JJ.**

DATED : FEBRUARY 28, 2020

P.C.

1 Heard. By this Civil Application, the Applicant is seeking an order directing Petitioner No.1 to transpose him as Respondent No.5 in the Writ Petition.

2 The learned counsel for the Petitioner submits that the Writ Petition has been filed challenging the order dated 09.07.2014 passed by Respondent No.2. He submits that on the date of filing the Writ Petition i.e. 10.11.2014, the

Applicant was working as a Commissioner of Police, Mumbai. Therefore, his name was shown as Petitioner No.3 in the Writ Petition. He submits that during pendency of the Writ Petition, the Applicant was retired on 31.01.2017 from the Post of Director General of Homeguards. He submits that now he wants to represent himself through his Advocate in the matter. Hence, he has filed the present Application for transposing him as Respondent No.5 in the Writ Petition. Therefore, in the interest of justice, this Hon'ble Court be pleased to allow the Application.

3 On the other hand, the learned AGP for the Petitioner submits that they have no objection, if the Civil Application is allowed. Similarly, the learned counsel for Respondent No.1 and learned counsel for Respondent Nos.3 and 4 submits that they have no objection if the Civil Application is allowed.

4 It is to be noted that though the Civil Application was duly served on all the parties, no one has filed reply to oppose the Civil Application.

5 The learned counsel for Respondent No.2 has vehemently opposed the Civil Application. He submits that the Civil Application is frivolous and therefore, it is not necessary to entertain the same. He submits that in the present proceeding, the Petitioners are challenging the order dated 09.07.2014 passed by Respondent No.2. He submits that even Petitioner Nos.2 to 4 are retired Government servants, therefore, they are also not necessary party in the Writ Petition. On the basis of this

submission, the learned counsel for Respondent No.2 submits that there is no substance in the Application and same be dismissed.

6 We heard the learned senior counsel for the Petitioner and the counsel for other Respondents.

7 It is to be noted that in the present proceeding the Petitioner challenges the order dated 09.07.2014 passed by Respondent No.2. At the time of filing the petition, the Applicant was working as a Commissioner of Police, Mumbai. Hence, he was joined as Petitioner No.3 in the Writ Petition. Now, during pendency of the Writ Petition, the Applicant retired from service on 31.01.2013. Now the Applicant wants to appoint his own Advocate to protect his interest in the present proceedings. The submissions made by the learned counsel for Respondent No.2 are not acceptable at all. In the first instance, Respondent No.2 is not necessary party in the present proceedings, because the Petitioners are challenging the order dated 09.07.2014 passed by Respondent No.2. The objection raised by the counsel for Respondent No.2 about the frivolous Application is also not acceptable, because the Applicant has right to protect his interest in the present proceeding.

8 Considering these facts and the submissions made by the learned senior counsel for the Applicant, we are of the opinion that the Applicant has made out a case for allowing the Civil Application to the extent, directing the Petitioners to transpose Petitioner No.3 as Respondent No.5 in the Writ Petition.

9 In view of these facts, following order is passed:

- a. The Government Pleader, on behalf the Petitioners is directed to transpose Petitioner No.3 – Mr. Rakesh Maria as Respondent No.5 in Writ Petition No.109/2015 by carrying out appropriate amendment.
- b. Amendment to be carried out within 4 weeks from today.
- c. If the amendment is carried out within stipulated time as stated hereinabove, the Petitioners to serve an amended copy of the Writ Petition on other side, immediately thereafter.
- d. If the amendment is not carried out by the Petitioners within stipulated time as stated hereinabove, the Applicant to carry out the amendment in the Writ Petition with intimation to the office of Government Pleader.
- e. Liberty granted to the Respondents to file additional Affidavit-in-Reply, if they so desire, in respect of the amended Writ Petition.
- f. The Civil Application stands disposed of accordingly.
- g. No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)