

Anand

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

WRIT PETITION NO. 11046 OF 2018

Prachar Communication Ltd. .Petitioner

Vs.

M/s. S. I. Enterprises .Respondent

Mr. Chaitanya Nikte, Advocate, for the Petitioner

Mr. S. D. Dighe i/b. Mr. Amol Wagh, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 01.08.2018 passed by the learned 10th Jt. C. J. J. D., Pune below Exh. 50 in Special Civil Suit No. 1929 of 2011, by which the Petitioner's Application (Exh. 50) for clubbing R. C. S. No. 2114 of 2011 with Special Civil Suit No. 1929 of 2011 came to be rejected.

3. Learned counsel for the Petitioner submits that the learned Judge ought to have clubbed both the suits, having regard to the fact that the parties in both the suits were same, although the Respondent Companies (Plaintiffs) were different. He submits that Mr. Maruti Wani is the Proprietor of M/s. S. I. Enterprises, who is the Plaintiff in

Special Civil Suit No. 1929 of 2011, whereas, Mr. Maruti Wani's wife - Sou. Laxmi Wani is the Proprietor of M/s. Vikas Industries, who is the Plaintiff in R. C. S. No. 2114 of 2011. According to the learned counsel for the Petitioner, both the Proprietary concerns were engaged in the same business and that separate Proprietary concerns were formed only for tax purposes. He further submits that in R. C. S. No. 2114 of 2011 although, Maruti Wani's wife, Laxmi Wani is the Proprietor of M/s. Vikas Industries, Maruti Wani has filed his Affidavit of evidence on the basis of Power of Attorney given to him by his wife – Laxmi Wani, Proprietor of M/s. Vikas Industries. According to the learned counsel for the Petitioner, serious prejudice would be caused to the Petitioner in his case, if the said suits are not clubbed together. Learned counsel for the Petitioner submits that the Respondent will improve the admissions in the subsequent cross examination when conducted in the subsequent suit.

4. He further submits that a Tripartite Agreement entered into R. C. S. No. 2114 of 2011 (between M/s. S. I. Enterprises, M/s. Vikas Industries and Prachar Communication Ltd. on 21.08.2008 shows that Maruti Wani was acting on behalf of both the said firms i. e. M/s. S. I. Enterprises and M/s. Vikas Industries). The said tripartite agreement is the subject matter of R. C. S. No. 2114 of 2011.

5. Learned counsel for the Respondent (Original Plaintiff) opposed the Petition. He submitted that no interference was warranted in the impugned order. He further submitted that both the firms i. e. M/s. S. I. Enterprises and M/s. Vikas Industries are separate entities and that there are separate invoices issued by the said proprietary concern. He submits that having regard to the same, both the suits cannot be clubbed and decided together.

6. Perused the papers. The Respondent (Original Plaintiff) i. e. M/s. S. I. Enterprises has filed a suit through its Proprietor Maruti Wani and has prayed that a decree be passed for Rs. 15,42,531.20/- as against the Petitioner alongwith future interest. The said suit is filed on the basis of a Tripartite Agreement dated 21.08.2008 entered into amongst M/s. S. I. Enterprises, M/s. Vikas Industries and Prachar Communication Ltd. and on the basis of certain invoices issued by the said proprietary concern i. e. M/s. S. I. Enterprises. The second suit is filed by M/s. Vikas Industries through its Proprietor – Sou. Laxmi Wani, being R. C. S. No. 2114 of 2011. The said suit is filed by Sou. Laxmi Wani through her Power of Attorney Holder – Maruti Wani. The said suit is based on an Agreement dated 24.09.2008 entered into between M/s. Vikas Industries and Prachar Communication Ltd.. Both the said suits are being heard by the same Court. It appears that when Maruti

Wani filed his Affidavit of evidence in both the suits, the Petitioner filed an Application Exh. 50 dated 04.10.2013 and prayed for the following reliefs :-

“(a) The Spl. C. S. No. 2114/2011 and Spl. C. S. No. 1929/2011 be consolidated, clubbed and joint hearing of the said two suits be held.

(b) Any other order in the interest of justice may kindly be passed.”

The said Application was resisted by the Respondent (Original Plaintiff) by filing their reply. The said reply is on page No. 35 of the Petition. In para 6 of the said reply, the Respondent has accepted as true that Maruti Wani was looking after both the businesses i. e. M/s. S. I. Enterprises and M/s. Vikas Industries and accordingly, has signed the plaint in Special Civil Suit No. 1929 of 2011 as well as in R. C. S. No. 2114 of 2011. Similarly, in para 9 of the reply, Maruti Wani has accepted as true that one Rakesh Pathak had signed on behalf of the two firms i. e. M/s. S. I. Enterprises and M/s. Vikas Industries as their representative. The learned Judge after hearing the parties was pleased to grant the said Application vide order dated 11.12.2013 and accordingly, the parties were directed to lead evidence in Special Civil Suit No. 1929 of 2011, which was to be considered in both the suits. The said order was challenged by the Respondent (Original Plaintiff) i. e. M/s. S. I. Enterprises by filing a Review Application (Exh. 54)

under O. XLVII, Rule 1 of the Code of Civil Procedure. The said Application seeking review of the order was allowed by the trial Court vide order dated 24.03.2015 and the matter was fixed for hearing Exh. 50 afresh. Thereafter, the Petitioner (Original Defendant) challenged the said order passed in Review before the learned District Judge – 15, Pune by filing M. C. A. No. 412 of 2015. The learned District Judge partly allowed the said Appeal and set aside the order dated 24.03.2015 passed below Exh. 54 to the extent of hearing the Application (Exh. 50) afresh. Accordingly, the learned District Judge vide order dated 07.10.2016 set aside the order below Exh. 50 dated 11.12.2013 for clubbing both the suits together. Hence, this Petition. Being aggrieved by the order dated 07.10.2016 passed by the learned District Judge, Pune in M. C. A. No. 412 of 2015, the Petitioner challenged the same in this Court by filing W. P. No. 8845 of 2017. This Court vide order dated 11.07.2018, set aside the order dated 24.03.2015 passed by the trial Court below Exh. 54 as well as the order dated 11.12.2013 (Exh. 50). This Court, by consent, directed the parties to argue Exh. 50 afresh before the trial Court. Pursuant thereto, the parties appeared before the trial Court and re-argued the Application (Exh. 50). The trial Court after hearing the parties vide order dated 01.08.2018 rejected the Petitioner's Application filed for clubbing and deciding both the cases together, for the reasons mentioned in the said order.

7. No doubt, Maruti Wani, Proprietor of M/s. S. I. Enterprises has also filed his Affidavit of evidence on the basis of Power of Attorney given by his wife – Sou. Laxmi Wani in the other suit, being R. C. S. No. 2114 of 2011, the fact remains that both the suits are filed on the basis of separate invoices and as such, both the suits will have to be decided independently. However, it is not in dispute that Maruti Wani is the Proprietor of M/s. S. I. Enterprises and has filed his Affidavit of evidence in Special Civil Suit No. 1929 of 2011 and has also filed his Affidavit of evidence in R. C. S. No. 2114 of 2011, on the basis of Power of Attorney of his wife – Sou. Laxmi Wani and as such, the defence of the Petitioner is likely to be prejudiced, if separate cross examinations are conducted in both the said suits. The possibility of Maruti Wani improving his case in the subsequent suit cannot be ruled out. Therefore, as suggested by the learned counsel for the Petitioner, that after the cross examination of the Proprietor of the Respondent – Maruti Wani is recorded in Special Civil Suit No. 1929 of 2011, the said cross be taken on record in R. C. S. No. 2114 of 2011, as the Petitioner intends to take common cross.

8. Accordingly, the Petition is partly allowed and disposed of on the following terms & conditions :-

O R D E R

(i) The impugned order dated 01.08.2018 passed by the learned 10th Jt. C. J. J. D., Pune below Exh. 50 in Special Civil Suit No. 1929 of 2011 rejecting the Petitioner's Application for clubbing two cases together is rejected. However, the Petitioner is permitted to conduct common cross examination of Maruti Wani, in both the suits. The cross-examination taken in Special Civil Suit No. 1929 of 2011, to be placed in R. C. S. No. 2114 of 2011.

9. Petition is disposed of on the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)