

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12514 OF 2018

Pankaj Kishor Shah

....Petitioner

V/s.

Naresh Purushotham Khetan
and others

....Respondents

Smt. Harsha Shah i/b Mr. Yatin R. Shah for the Petitioner
Ms. Sunita M. Poddar a/w Ms. Daya Jadhav a/w Mr. Rohan A.
Waghmare for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

RESERVED ON: FEBRUARY 25, 2021.

PRONOUNCED ON: MARCH 2, 2021.

P.C.:

1] This Petition is by Plaintiff questioning the order dated 19/09/2014 passed in Chamber Summons No. 1321 of 2014 whereby prayer moved by the Petitioner under Order I Rule 10 of Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) for impleadment came to be rejected.

2] Petitioner initiated the aforesaid Suit praying therein declaration, injunction, possession, recovery of amount.

3] According to Petitioner-Plaintiff, during pendency of the Suit, Defendant-Respondent transferred the property and as such purchaser needs to be added for which the aforesaid Chamber Summons was taken out.

4] According to learned counsel, the party who is sought to be added is his ex-wife who was divorced way back. He would further claim that wife was given Power of Attorney/authorisation to operate the account of his firm namely M/s. Spire India from which she has diverted huge amounts by unauthorised withdrawals to the account of the Defendant. Defendant in turn purchased the suit property and has transferred the same in favour of the ex-wife of the Petitioner. As such, she is necessary to be added as party. According to learned counsel, such information was received on 31/01/2014 and that being so, Chamber Summons is taken out during pendency of the Suit.

5] Counsel for the Respondent submits that in reply, it is specifically claimed by Defendant that he has not created any third party interest in regard to the Suit property. Apart from above, she claimed that Suit is at the concluding stage. That being so, Court should be slow in showing indulgence. Respondent-Defendant in reply to the Chamber summons has specifically come out with a case that the property which is subject matter of the Suit is never transferred and has remained with Defendant. He has denied any relation or transaction with ex-wife of the Petitioner namely Anuja Amardeep Bamne. In the aforesaid background, dismissal of the Petition is sought.

6] I have considered rival submissions.

7] It is the case of the Petitioner that he has already divorced his ex-wife namely Anuja who alleged to have made illegal withdrawals from the various accounts of the Petitioner's firm and diverted the same to the Defendant. Defendant in turn has purchased the Suit

property out of the funds received from the firm of the Petitioner.

8] In the aforesaid background, the Trial Court was of the view that amendment and impleadment is not warranted particularly when the Petitioner himself has come out with a case of giving an authorisation in favour of proposed party to be added for maintaining affairs and account of the firm. Apart from above, Petitioner trying to drag his divorced wife i.e. proposed Defendant in the Suit, so as to prolong the proceeding cannot be doubted.

9] Since the claim of the Petitioner is based on the withdrawal from the accounts of the firm and further depositing the said in the account of the Defendant either by cheque or in cash, it is for the Petitioner-Plaintiff to prove the same.

10] Respondent-Defendant has already come out with a case that Suit property is not transferred by him. In that view of the matter, proposed amendment as is claimed including that of impleadment of party is not warranted.

11] The Suit is at the stage of final arguments. The proceedings are delayed at the behest of the Petitioner as can be inferred from the record.

12] Reliance placed by the Petitioner on the Judgment of Apex Court in the matter of **Ragu Thilak D. John V/s. Rayappan and others**¹ will be of hardly any assistance. In the said Judgment, the Apex Court has observed that even if the claim in the amendment is barred by the limitation, still the amendment needs to be allowed as the issue can be framed to that effect. As far as the case in hand is concerned, it is not pleaded by the Respondent that impleadment or the amendment is barred by the limitation. Another Judgment in the matter of **Kasturi V/s. Iyyamperumal and others**² will have no applicability to the case in hand as the impleadment is not justified in the present case as there is no third party interest created in the matter.

1 (2001) 2 Supreme Court Cases 472

2 (2005) 6 Supreme Court Cases 733

13] In the aforesaid background, Petitioner has failed to demonstrate that party who is sought to be added is interested in the action as it is claimed by the Defendant that he has not created third party interest in regard to the property. In that view of the matter, the law laid down by the Apex Court in the matter of **Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and Ors.**³ will also not support the case of the Petitioner.

14] In the aforesaid background, no case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]

15] After the order was pronounced, learned Counsel for the Petitioner informs that the Petitioner/Plaintiff intends to question the present order before the Apex Court and as such, interim relief granted by this Court on 14/12/2020 be continued for a period of two weeks.

³ (1992) 2 SCC 524

16] Prayer is opposed by the learned Counsel for the Respondents.

17] The Suit is at the fag end with the Trial Court viz final arguments. As such, by way of last chance, interim order stands extended for a period of two weeks.

[NITIN W. SAMBRE, J.]