

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11011 OF 2015

Vijay s/o Narayandas Rizwani
Age – 49 years, Occ – Business,
R/o 37, Bhagya Nagar, Nanded
District - Nanded

PETITIONER
(Ori. Defendant No.3)

VERSUS

1. The Bank of India,
The Body Corporate
Under the Bank Companies
(Acquisition and Transaction of
undertaking) Act V of 1970,
Having its Head Office :
Express Tower, Nariman Point
Mumbai 400 021,
and the Branch Office amongst other place
at Subhash Road, Vazirabad, Nanded
Through its Power of Attorney Officer,
Bank of India

RESPONDENTS
(Original Plaintiff)

2. Narayandas Nawalrai Rizwani
Age – 72 years, Occ – Business
R/o Behind Jawahar Karkhana
Sangamner Road, Shrirampur

(Ori. Defendant No.1)

.....

Mr. Anil H. Kasliwal, Advocate for the petitioner
Mr. Ajit D. Kasliwal, Advocate for respondent No.1
Mr. Ganesh A. Gadhe, Advocate for respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 7th JULY, 2022
PRONOUNCED ON : 5th SEPTEMBER, 2022

ORDER :

1. This petition, filed under Article 226 and 227 of the Constitution of India, challenges the order dated 18th December, 2014 passed by the learned Civil Judge, Senior Division, Nanded below Exhibit-169 in Special Civil Suit No. 96 of 1999.

2. The petitioner is original defendant No. 3 in the said Special Civil Suit No. 96 of 1999 filed by the plaintiff bank for recovery of loan amount advanced by the bank to the petitioner, his father and mother. The plaintiff bank had claimed recovery of Rs. 3,23,997/-. Respondent No.2, original defendant No.1 (father of the petitioner) has filed counter claim in the said suit contending that the plaintiff bank, without any authority and without orders from any competent civil court, has encashed shares worth Rs.16,13,385/- given by him to the plaintiff bank towards security of repayment of loan. In the counter claim, said amount of Rs.16,13,385 and damages of Rs.3,00,000/- are claimed.

3. The plaintiff bank has withdrawn the special civil suit No. 96 of 1999 unconditionally but the counter claim is pending. The petitioner filed application Exhibit-169 praying to add him as a co-plaintiff in the counter claim filed by his father, original defendant No.1 on various grounds, including that the petitioner

appeared as power of attorney holder to conduct and perform all the necessary acts for and on behalf of defendant No.1 as he was authorized by the general power of attorney dated 4th February, 1998 and has conducted all the matters since 1998, as defendant No.1 was suffering from acute asthma and old age. The petitioner has also filed affidavit in lieu of examination in chief in the counter claim. Being elder son and beneficiary of defendant No.1, the petitioner is in possession of all the documents relating to the present dispute and he has filed all the documents in the court. He has incurred expenditure for court fee stamp, engaging advocate etc. After the death of his mother on 26th December, 2002, his father (defendant No.1) was disturbed and he decided to shift to Shrirampur, with an intention to perform second marriage. The power of attorney has been cancelled by defendant No.1, his father so as to blackmail and pressurize the petitioner to accept the second marriage performed by him. On these grounds the petitioner claimed his addition as co-plaintiff in the counter claim under Order I, Rule 10 of the Civil Procedure Code.

4. The application was opposed by the father – defendant No.1. The Trial court has rejected the application. Being aggrieved by the rejection order, present writ petition is filed.

5. Heard learned advocate for the petitioner and learned advocates for the respondents.

6. Learned advocate for the petitioner assailed the impugned order by submitting that the petitioner being co-sharer in the property of respondent No. 2 (defendant No.1), his father, he is entitled to be impleaded as co-plaintiff in the counter claim. Since he was given general power of attorney, which though later on has been cancelled, still, since he has given affidavit of evidence in the counter claim, he needs to be added as co-plaintiff in the counter claim. In support of his submissions, he relied on ***"Amit Kumar Shaw and Another V/s Farida Khatoon and Another" 2005 (3) Mh.L.J. 330*** and ***"M/s Chitralekha Builders and Another V/s G.I.C. Employees Sonal Vihar Co-op Housing Society Ltd., and Others" 2005 (4) ALL MR 584.***

7. Per contra, learned advocate for respondent No.2 (defendant No.1), supported the impugned order. He submits that the petitioner was not a party to the transaction of respondent No.2 depositing shares towards security in the bank. The general power of attorney executed by respondent No.2 in favour of the petitioner has already been cancelled. There is nothing on record to show that there was any transaction

between the petitioner and respondent No.2. The counter claim is filed by defendant No.1. In that view of the matter, according to him, the Trial Court is justified in rejecting the application Exhibit-169 filed by the petitioner seeking his addition as co-plaintiff in the counter claim filed by defendant No.1.

8. It is a matter of record that the counter claim is filed only by defendant No.1 (respondent No.2), the general power of attorney executed by respondent No.2 in favour of the petitioner is cancelled. Though the petitioner has filed affidavit of evidence in the counter claim filed by respondent No.2, the respondent No.2, by filing application Exhibit-148 prayed to discard the evidence of the petitioner, which is allowed by the trial court and respondent No.2 is permitted to file fresh affidavit of evidence. Accordingly, respondent No.2 has filed his affidavit of evidence at Exhibit-149. The matter is now posted for cross-examination of respondent No.2.

9. It is clear from the record that three different suits were filed by the plaintiff bank for recovery of amounts due against cash credit facilities. All the three suits are withdrawn by the bank and counter claims are pending. In special civil suit No. 90 of 1999, the petitioner has filed counter claim. In special civil suit No. 97 of 1999 counter claim was filed by Smt. Mayadevi and

after her death, respondent No.2, petitioner and his brother – Pratap are taken on record, being her legal representatives and the said counter claim is being prosecuted by them. In Special Civil Suit No. 95 of 1999, Prakash, brother of the petitioner has filed counter claim. Though the petitioner has filed affidavit in lieu of examination in chief, in all these three counter claims, however, in the counter claim filed by respondent No.2 in special civil suit No. 96 of 1999, the subject matter is shares, which are standing in the name of respondent No.2. There is nothing on record to show that said shares were pledged jointly by the petitioner, his brothers and mother.

10. The petitioner has failed to show that he has direct and substantial interest in the subject matter of the counter claim filed by defendant No.1 and that he is a affected party. His presence is not necessary for answering the issues framed in the counter claim.

11. His father, who has filed the counter claim, is *dominus litis* and he is the master of the litigation and without his consent, third party cannot be allowed to be a co-plaintiff. In the light of the aforesaid facts, the Trial Court is justified in rejecting the application filed by the petitioner, by a well reasoned order.

12. In "***M/s Chitralekha Builders and Another***" (*supra*), the learned Division Bench of this Court, was considering the scope and object of Rule 10 of Order I of the Civil Procedure Code and has held that the object behind sub Rule (2) of Rule 10 of Order I of the CPC is to discourage contests on technical pleas and to save honest and *bona fide* claimants from being non suited. This power to strike out or add parties can be exercised by the Court at any stage of the proceedings.

13. Similarly, in "***Amit Kumar Shaw and Another***" (*supra*), the Apex Court, while considering the object of Rule 10 of Order I of the CPC, has held that the power of the court to add a party to the proceedings does not solely depend upon a question whether he is interested in the suit property.

14. There cannot be any dispute about the ratio in above two rullings. However, in the facts of the present case, the petitioner has failed to show that he has direct and substantial interest in the subject matter of the counter claim filed by his father / defendant No.1. In that view of the matter, these rullings would not assist the petitioner'.

15. For the aforestated reasons, no case is made out by the petitioner to interfere in the well reasoned order passed by the

Trial Court, in the extraordinary writ jurisdiction of this Court. There is no illegality or perversity in the order impugned in the writ petition. Writ petition, being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp11011-15