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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 4402 OF 2017

SHRI. JASBIR SINGH SANDHU

....PETITIONER

V/s.

SOU. RAJANI RAJAN VARAM AND ORS

.....RESPONDENTS

**Mr. Pralhad D. Paranjape a/w Manish Kelkar Advocate for the
Petitioner**

Mr. Sandeep M. Phatak Advocate for Respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 20, 2022.

P.C.:

1) Vide impugned order passed below Exh. 43 on 02/01/2017, Court of Civil Judge Senior Division in Special 1104/2015 directed impleadment of Respondent no. 2 as a party Defendant. As such, this Petition by the Plaintiff-Petitioner.

2) The claim of the Respondent that Respondent no. 2 is an appropriate party to the Suit is sought to be substantiated by the pleadings in the written statement of Defendant no. 1. It is brought to

my notice that in view of friendly terms between Plaintiff and proposed Defendant, loan advanced by Plaintiff to Defendant no. 1 which Defendant no. 1 has failed to return.

3) If the pleadings in the Plaint are appreciated, what can be noticed is, amount which was advanced has gone to the coffers of Defendant no. 1 as same was deposited in her bank account.

4) As regards Defence of Respondent is concerned, it is always open for the Respondent to examine Defendant no. 2 as her witness so as to establish a case that amount was never received or such other contentions as are sought to be raised by way of pleadings in the written statement.

5) No doubt, whether to permit addition of party to Suit even if against such party relief is not claimed, is within the discretion of the Court. However, this Court is required to be sensitive to the fact that (a) No specific relief is claimed against proposed Defendant i.e. Defendant no. 2 and (b) Necessity of impleading him as party is even if is pleaded in the written statement of Defendant no. 1, Defendant no. 2 does not appear to be an appropriate party to the Suit.

6) As such, keeping the option open to the Respondent-Defendant

of examining Defendant no. 2 as a witness, I hardly see any reason so as to justify impleadment of Defendant no. 2.

7) Though Defendant has drawn support from the Judgments in the case of **Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and Others¹** and in the matter of **Anil Kumar Singh V/s. Shivnath Mishra alias Gadasa Guru²** so as to claim that Defendant no. 2 has a cause of action, however, no such cause could be noticed, necessitating his impleadment. Apart from above, fact remains that Suit can be decided even in absence of Defendant no. 2 as it is the case of the Plaintiff that amount is principally received by Defendant no. 1. In that view, both Judgments cited supra will be of hardly any significance.

8) As such, Petition is allowed. Order impugned dated 02/01/2017 is hereby quashed and set aside. Application Exh. 43 stands rejected.

[NITIN W. SAMBRE, J.]

1 (1992) 2 Supreme Court Cases 524

2 (1995) 3 Supreme Court Cases 147