

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

WRIT PETITION 8015 OF 2022

Auto Equipment Kolhapur
Through partner, Shri Sunil S. Gadkari ...Petitioner
vs.
Ghatge Patil Transport Ltd. & Anr. ...Respondents

Mr.Sandeep S. Koregave for Petitioner.
Mr.Yuvraj Narvankar for Respondents.

CORAM : ROHIT B. DEO, J.

DATED : 12 JULY 2022

P.C. :

1. This petition emanates from Regular Civil Suit 647/2012 which is instituted by the Petitioner-plaintiff for money decree for Rs.4,46,564/- along with interest, *pendente lite* and future.
2. Cause title of the plaint describes the plaintiff as “Auto Equipment Kolhapur through partner Mr.Sunil S. Gadkari”.
3. Respondents herein are the defendants who have filed their written statement, *inter alia* questioning the maintainability of the suit on the premise that the plaint does not contain any averment stating or disclosing the names of the partners as reflected in the record of the Registrar of Firms nor has the plaintiff filed on the record the certificate of registration of the firm.
4. During the course of trial and after the plaintiff closed

evidence, the plaintiff preferred an application purportedly under Order 1 Rule 10 read with Section 153 of Code of Civil Procedure, 1908 (Code) seeking addition of the name of the partner of the firm Mrs.Sharmila Sunil Gadkari in the cause title and description of the plaintiff. The plaintiff further sought addition of the registration no.MPA28657 to the description of the plaintiff firm. The defendant opposed the application supra on the premise that the attempt is to fill in the legal lacunae and wipe out the admissions which have come on the record in the cross-examination of the plaintiff.

5. The learned trial court rejected the application supra vide order dated 20.11.2019 reasoning that the application was in substance under Order 6 Rule 17 of the Code and since the trial has commenced, the proviso to Order 6 Rule 17 stands triggered. The learned trial court further observed that the application dilutes the admissions given by the plaintiff in the cross-examination since the plaintiff was cross-examined on the aspect of registration of the firm.

6. Being dissatisfied by the order impugned, the plaintiff is invoking writ and supervisory jurisdiction.

7. I have heard learned Counsel Mr. Koregave for the plaintiff and the learned Counsel Mr.Narvankar for the defendant, who have reiterated the submissions canvassed in the court below.

8. In my considered view, correction of the cause title as to show the name of the other partner in the firm must be allowed. Apart from the fact, that the plaintiff firm can be represented through the authorised

partner and it is not really necessary to add all the partners as plaintiffs, if the plaintiff is desirous of bringing on record the name of the other partner of the firm and to correct the description in the cause title, no prejudice is likely to be caused and in any event, the trial is not going to be delayed.

9. Insofar as the addition of the registration number of the firm in the cause title, I am not interfering with the order impugned, albeit for reasons different from those recorded by the trial court. Perusal of the issues framed reveals that no issue is framed touching the maintainability of the suit in view of the provisions of Section 69 of the Indian Partnership Act. The learned Counsel for the plaintiff has stated that at this stage, the plaintiff does not intend to adduce any further evidence. If and when, the issues are recasted suo motu or on application by the parties, the plaintiff would be entitled to establish, if necessary by adducing evidence, that the firm is a registered firm and therefore, the bar under Section 69 of the Indian Partnership Act, 1932 does not apply.

10. In view of the discussion supra, I am inclined to allow the petition partly by permitting the plaintiff to correct the description in the cause title as to reflect the name of the other partner. As observed supra, this is not the stage to dilate on whether the suit is maintainable in its present form since there is no issue framed on the said aspect. The rest of the order is, therefore, not interfered with.

11. The petition is partly allowed in the aforestated terms.

(ROHIT B. DEO, J.)