

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

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WRIT PETITION NO.10293 OF 2016

Mr. Yeturu Rama Chandra Reddy and Ors.	..Petitioners
Versus	
Sunshine Sand Suppliers and Anr.	..Respondents

**WITH
WRIT PETITION NO.10275 OF 2016**

Yaturi Constructions Limited and Ors.	..Petitioners
Versus	
Sunshine Sand Suppliers	..Respondent

Mr. R. P. Ojha i/by Asit K. Singh, for the Petitioners in both Petitions.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th APRIL, 2022

PC.

1. Both these petitions are by the defendants to Special Civil Suit No.318 of 2003 which is for recovery of amount. After the evidence of the plaintiff got over, two applications are taken out viz. application Exh.46 and application Exh.47 praying therein deletion of petitioners/defendant Nos.2 to 4, so also for recalling plaintiff for further cross-examination vide application Exh.47. Both these applications are rejected vide orders impugned dated 25th February, 2014. As such, these two different petitions.

2. As far as the issue of deletion of petitioners/defendant Nos.2 to 4, the plaintiff submits that they are non-executive directors. The Court below has specifically recorded a finding that petitioners/defendant Nos.2 to 4 are directors of the company and that being so, they are rightly impleaded.

3. Once it is the case of the petitioners that they are non executive directors of the defendant No.1 company, burden is on the petitioners to prove that they are not liable for suit claim. That being so, order passed below Exh.46 has bases of the pleadings. As such, same does not call for any interference.

4. As far as the order passed below Exh.47 is concerned, the Court below was justified in recording reasons that the application for recalling of the plaintiff for further cross-examination is moved with an intention to fill in the *lacuna*.

5. One more important aspect of which this Court must take note is, the orders impugned are passed eight years back. The present petitions are pending for last about six years and twice when the matters were listed, petitioners sought adjournment. As such, the applications which led to passing of the orders impugned can be viewed as an attempt on the part of the petitioners to delay the trial.

6. The cause cited that the defendant Nos.2 to 4 have

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undertaken to take care of litigation of defendant No.1 company will be of hardly any significance, particularly having regard to the fact that the parties were very much represented by the very same lawyer before the Court below. As such, it can be inferred that all of them have common stand. That being so, no error could be noticed in the orders impugned.

7. Both these petitions as such fail, dismissed.

[NITIN W. SAMBRE, J.]