

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5844 OF 2022

Pralhad Fakira Kaldate and anr_ Vs. ___ Sanjay Manohar Jumle

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H.R.Gadhia, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 19/10/2022

1] Heard Mr. Gadhia, learned counsel for the petitioner.

2] The petition challenges the order dated 22.2.2022, whereby the application for addition of party filed by the petitioner/original plaintiff at the appellate stage has been rejected by the learned lower Court on the ground that throughout the petitioner/plaintiff was aware of the plea that the suit was bad for non-joinder of necessary parties, inspite of which the plaintiff/petitioner did not take any steps and such an application at the appellate stage after delay of more than 8 years would not be maintainable.

3] Mr. Gadhia, learned counsel for the petitioner submits that since the party to be added is a necessary party, the same can be done at any point of time and at any stage and since the appeal is continuation of the suit, the same does not deter the appellate Court from granting the

application. He further submits that the question of delay would not arise, as when the petitioner realized that the person to be added was a necessary party, the application was made on 19.6.2017. It is therefore submitted that the impugned order is liable to be quashed and set aside and the application needs to be allowed.

4] A perusal of the judgment dated 30.3.2011, which is impugned in RCA No. 43/2011 indicates that a specific plea was raised in the written statement that the suit was bad for non-joinder of necessary parties. The suit is of the year 2009. Issues were framed in the suit and issue no. 4 was specific to this effect as to whether the suit is bad for non-joinder of necessary party. It is therefore apparent that right from the stage of framing of the issue, the plaintiff was aware regarding the position about non-joinder of necessary party, in spite of which the plaintiff did not take any step and had gone ahead with the trial, which has resulted in the dismissal of the suit by the aforesaid issue having been answered in affirmative under the judgment dated 30.3.2011. In the appeal which was filed in 2011, no steps were taken for moving an application for addition of party inspite of petitioner/plaintiff being specifically aware of the answer to issue no 4. It is for the first time that by the application dated 19.6.2017, the person who was to be a proper and necessary party is sought to be added.

5] There is absolutely nothing on record to indicate as to why such an application was not filed from 2011 to 2017. When the suit was for declaration regarding a right of way, the cause of action had already arisen against the party to be added in the year 2009 itself and therefore, considering the passage of time from 2009 to 2017 and the statute of limitation, it is now no longer permissible for the said application to be allowed. This position has been considered by the learned appellate Court in the correct perspective, in view of which I do not see any reason to interfere in the impugned order. The petition is dismissed. No costs.

6] The appeal shall be decided on its own merits.

JUDGE

Rvjalit