

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4976 OF 2023

Jaishrikrushna Enterprises Through
Its Proprietor Jijabrao Anandrao Pawar Petitioner

Versus

Agrawal Structures Mills Pvt Ltd
Through Its Director Sunil Madanlal Agrawal Respondent

Mr. A.P. Bhandari, Advocate for petitioner.
Mr. Mohit S. Shah, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th OCTOBER, 2023

ORDER :

1. Petitioner/original plaintiff is aggrieved by the order passed by learned 2nd Joint Civil Judge, Senior Division, Dhule, below Exhibit-97 in Special Civil Suit No. 11/2019.

2. Plaintiff filed suit for recovery of amount of Rs. 8,81,314/-. Respondent/defendant opposed the suit by filing written statement. On 04.09.2021 Trial Court framed issues at Exhibit-27. Thereafter, parties led their respective evidence and when the matter was at the stage of arguments of parties, application Exhibit-97 is filed by defendant contending that issues of jurisdiction and non joinder of necessary parties were required to be framed, which are not framed, therefore, these

two issues be framed. Plaintiff opposed the application by filing say at Exhibit-98. Trial Court has allowed the application. Hence, the present petition.

3. Heard the learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto and the impugned order.

4. Learned advocate for petitioner has assailed the impugned order contenting that in terms of Section 21 and Rule 13 of Order 1 of CPC, issue of jurisdiction and non joinder or mis-joinder of necessary parties is to be raised before the Trial Court at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement. In the present case issue of jurisdiction and non joinder or mis-joinder of necessary parties is raised at fag end of Trial. He submits that, though Rule 5 of Order 14 empowers the Court to amend or strike out issues at any time before passing decree, said power has to be exercised judiciously. In the present case, Trial Court has erred in framing additional issues at a belated stage and therefore, impugned order is unsustainable.

5. Learned advocate for respondent on the other hand supported the impugned order.

6. It is well settled that issue of jurisdiction is a legal issue which goes to the root of the matter. In this case, defendant has raised objection about non joinder of necessary parties in the written statement. Objection as to the jurisdiction is also taken in paragraph 8 and 9 of the written statement. Record indicates that in the year 2019 itself defendant filed application Exhibit-17 and raised objection as to the jurisdiction of the Trial Court in trying and entertaining the suit.

7. While disposing of the said application, Trial Court observed that, issue of jurisdiction will be considered at the time of trial. Considering these aspects, Trial Court has thought it fit to frame additional issues. Trial Court has rightly exercised discretion in allowing the application filed by defendant. No prejudice is likely to be caused to plaintiff by framing said issues as parties are given liberty to lead evidence on these issues. There does not appear any illegality or perversity in the order impugned in the present petition. No jurisdictional error or error of law is committed by the Trial Court while passing the impugned order. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]