

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12330 OF 2022

Vimal Abhaykumar Mutha

.. Petitioner

Versus

Hitesh Vinodbhai Babriya
and another

.. Respondents

Shri Sudhir D. Kulkarni, Advocate for the Petitioner.

Shri Bharat R. Warmaa, Advocate for Respondent Nos. 1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 10TH JANUARY, 2023.

FINAL ORDER :

. Heard.

2. The petitioner is aggrieved by the order dated 22nd September, 2022 passed by the Civil Judge Senior Division, Shrirampur below Exhibit 46 in R. C. S. No. 241 of 2017, thereby allowing the respondents' application for being impleaded as a party defendants.

3. The facts of the case are that, the petitioner had initiated R.C.S. No. 241 of 2017 against one Shri Vinodroy Popatlal Babriya under the provisions of the Maharashtra Rent Control Act seeking possession on the ground of arrears of rent. It is the case of the petitioner in the plaint that on 13.07.2004, the subject property was purchased by the petitioner from the erstwhile owner and the said Vinodroy Popatlal Babriya was the tenant in the capacity of proprietor of Maharashtra Steel Corporation. On

23rd April, 2021, the defendant expired and an application was preferred by the petitioner for bringing the legal heirs of Vinodroy Popatlal Babriya on record. Accordingly his son has been brought on record as legal heir. On 04th December, 2021, an application came to be filed by respondents herein for being impleaded as legal heirs on the ground that Maharashtra Steel Corporation is a partnership firm since the year 1965 and the deceased Vinodroy Popatlal Babriya was partner in the firm till his demise. The respondents claimed to be partners of the said firm and as such sought impleadment in the suit.

4. Learned counsel for the petitioner submits that Maharashtra Steel Corporation was the proprietary firm of Vinodroy Popatlal Babriya and upon his demise, his son being legal heir, has already been brought on record. He would further submit that said Vinodroy Popatlal Babriya appears to have sublet the suit property to the partnership firm namely Maharashtra Steel Corporation and partnership firm of Maharashtra Steel Corporation is not tenant of the petitioner and cannot be impleaded as party. He would further submit that while recording evidence, the deceased Vinodroy Popatlal Babriya has not stated that the firm should be made a party. Learned counsel for petitioner would contend that the petitioner being *dominus litus*, she cannot be forced to implead a party against her wish and against whom no relief is claimed. In support of his contention, he relies upon the decision of the Apex Court in the case of **Sarvinder Singh Vs. Dalip Singh and others** reported in **(1996) 5 SCC 539** and the decision of this Court in the case of **Devchand Constructions Vs. Board of Trustees of the Port of Morgugao and others** reported in **2006(5) Mh.L.J. 644**.

5. Per contra, learned counsel for the respondents invited the attention of this Court to the extract from the Register of Firms, which is annexed at page No. 57 of the petition, and would urge that the extract shows registration of the Maharashtra Steel Corporation as partnership firm since the year 1965 and as such on demise of one of the partners, the other partners are required to be brought on record.

6. I have considered rival submissions of the parties.

7. Perusal of the plaint would show that Vinodroy Popatlal Babriya has been impleaded as a sole defendant in the civil suit as a proprietor of Maharashtra Steel Corporation. It is the case in the suit that Maharashtra Steel Corporation as a proprietary firm is tenant on the premises and the relief is sought of recovery of possession from the tenant. On the contrary in the written statement it has been stated that the defendant/deceased Vinodroy Popatlal Babriya has taken the premises on rent for Maharashtra Steel Corporation in the year 1964 and the said firm is a partnership firm, in which initially Vinodroy and his brother Manoharlal Popatlal Babaria were partners.

8. Provision in respect of suits filed by or against firms is contained in Order XXX of the Code of Civil Procedure and Order XXX Rule 1 provides that any two or more persons claiming or being liable as partners may sue or be sued in the name of the firm of which such persons were partners at the time of accruing of cause of action. From perusal of the plaint, it appears that the deceased Vinodroy Popatlal Babriya was impleaded as

proprietor of Maharashtra Steel Corporation and the extract from the Registrar of Firms, which is annexed at page No. 57 of the writ petition, which is a public document shows that Maharashtra Steel Corporation was a partnership firm and upon demise of the deceased Vinodroy Popatlal Babriya, who has admitted in his written statement that the premises was taken in the name of Maharashtra Steel Corporation, it is the surviving partners of the firm, who are required to be brought on record. The decision relied upon by the learned counsel for the petitioner in the case of **Sarvinder Singh Vs. Dalip Singh and others** (supra) is not applicable in the facts of the present case as in that case a subsequent transferee of the property was sought to be included and in the facts of that particular case the Apex Court has held that subsequent transferee is not necessary or proper party. In the present case, it is the case of the petitioner/plaintiff in the plaint that the tenant was Maharashtra Steel Corporation and although it is averred in the plaint, it was proprietary firm, the extract of Registrar of Firms shows that it is in fact a partnership firm.

9. As regards decision in the case of **Devchand Constructions Vs. Board of Trustees of the Port of Morgugao and others** (supra) is concerned, the facts of the case are clearly distinguishable in as much in that case plaintiff sought to recover certain amount from the defendant No. 1 and impleadment of the defendant No. 2 was held to be not necessary to adjudicate upon issue as to the liability of defendant No. 1 therein. It is in that context, this Court observed that the Courts will invariably take into account the wishes of the plaintiff before adding respondent parties as defendant to the suit. The

decisions relied upon by the learned counsel for the petitioner are clearly distinguishable and inapplicable to the facts of the present case. Learned counsel for the petitioner has also submitted that without vakalatnama being filed by the advocate for the applicant, application has been filed by the advocate. In such an event, it is for the applicants i. e. respondents to raise an objection as to the non authorization and not for the petitioner herein.

10. Considering the above, since the tenant of the premises is admittedly Maharashtra Steel Corporation and the extract of the Registrar of Firms shows that it is a partnership firm, there is no infirmity in the impugned order.

11. Writ petition is devoid of merits and same is accordingly dismissed. There shall be no order as to costs. Needless to state the contentions of the petitioner that the original deceased defendant has sublet the suit premises to the partnership firm of Maharashtra Steel Corporation will be decided by the Trial Court on its own merits, in accordance with law and uninfluenced by the observations made herein.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23