

SA Pathan

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

WRIT PETITION NO.12404 OF 2022

Hindustan Petroleum Corporation Ltd. ... Petitioner
V/s.
Ajita Santosh Tolani & Ors. ... Respondents

Mr. Pralhad Pranjape a/w. Mr. Rahul Punjabi i/by Mr.
Manish Kelkar.

Mr. Shravan M. Vyas for Respondents No.1 & 2.

Mr. Anil D'souza for Respondent No.3.

CORAM : S.G. DIGE, J.

DATED : 27th MARCH 2023.

Oral Judgment :- (Per S.G. Dige, J.)

1. **Rule.**
2. Rule is made returnable forthwith.
3. By consent of both the parties heard finally at the admission stage.
4. Learned Counsel for the Petitioner submits that the Petitioner had filed an Application under Order 1 Rule 10 of the Civil Procedure Code for joining Gocul Gas Private Limited as necessary party before the trial Court. But, learned trial Court has rejected the said Application on the ground that there was contract between the Petitioner and the Respondents. Hence, Gocul Gas Private Limited is not a necessary party as well as if the suit is decreed in favour of the Plaintiff. It is lookout of

the Plaintiff that how to execute the decree. Learned Counsel for the Petitioner further submitted that the suit premises is belongs to Gocul Gas Private Limited as per compromise terms filed before the Delhi High Court in the year 2002. But, this fact is not considered by the trial Court. Hence, requested to allow the Writ Petition.

5. Learned Counsel for Respondents No.1 and 2 submits that only to delay the Plaintiff's suit that the various Applications are being filed by the Petitioner. Earlier, the Application under Order 7 Rule 11 was filed thereafter this Application is taken out, the rent suit of the premises was given by the Petitioner to the Respondents on time to time. The suit before the trial Court is part-heard. The witness is not cross-examined since last three (3) years and only to prolong the matter this Petition is filed.

6. I have heard both the learned Counsel. Perused the impugned order passed by the trial Court. In the written statement, the Petitioner has taken the defence that the suit premises was given to the Gocul Gas Private Limited. In pursuance of the compromise consent terms filed before the Delhi High Court.

7. Moreover, in the letter dated December 21st, 2006, which the Petitioner had issued to the Gocul Gas Private Limited regarding implementation of out of Court settlement premises being shop admeasuring 100 sq. ft. approximately situated at Sion, Mumbai which is suit premises. In the impugned order, the trial Court observed that the Plaintiffs i.e. Respondents No.1 and 2 herein have denied any sort of relationship with Gocul Gas Private Limited, therefore, in such situation, it would not be just and proper to allow the Application. In my view, when the Petitioner has come with specific case that the suit shop is belonged to Gocul Gas Private Limited and there was compromise in

that respect. Hence, the trial Court should have considered this fact while deciding the dispute between the parties. Gocul Gas Private Limited is necessary party. Hence, I pass the following order:

ORDER

1. The Writ Petition is partly allowed.
2. The order passed by the trial Court dated 27 April, 2022 below exhibit 32 in T.E. Suit No.191 of 2015 is quashed and set aside.
3. The Gocul Gas Private Limited be added as a party defendant in the pending suit.
4. All contentions of the parties are kept open.
5. The trial Court is requested to dispose of the pending suit as early as possible preferably within one year as the witness is of 85 years old.

The Writ Petition is disposed of.

(S.G. DIGE, J.)