

SA Pathan

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

WRIT PETITION NO.15783 OF 2023

Dwarka Omprakash Dayama ... Petitioner

V/s.

Sonal Chandrakant Dayama Alias
Dadicha & Ors ... Respondents

WITH

WRIT PETITION NO.15784 OF 2023

Dwarka Omprakash Dayama ... Petitioner

V/s.

Vallabhi Alias Vallabhpyari Chandrakant
Dayama Through POA & Ors ... Respondents

WITH

WRIT PETITION NO.15785 OF 2023

Dwarka Omprakash Dayama ... Petitioner

V/s.

Sonal Chandrakant Dayama Alias
Dadicha & Ors ... Respondents

WITH

WRIT PETITION NO.15786 OF 2023

WITH

WRIT PETITION NO.15787 OF 2023

Dwarka Omprakash Dayama ... Petitioner

V/s.

Sushila Sanjivkumar Vyas Through POA
& Ors ... Respondents

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**WITH
WRIT PETITION NO.15788 OF 2023**

Dwarka Omprakash Dayama	... Petitioner
V/s.	
Vallabhi Alias Vallabhpyari Chandrakant Dayama Through POA & Ors	... Respondents

**WITH
WRIT PETITION NO.15789 OF 2023**

Dwarka Omprakash Dayama	... Petitioner
V/s.	
Abhishek Jitendra Dayama Through POA Jitendra Hariprasad Dayama & Ors	... Respondents

**WITH
WRIT PETITION NO.15790 OF 2023**

Dwarka Omprakash Dayama	... Petitioner
V/s.	
Tejaswini Jitendra Dayama Through POA Jitendra Hariprasad Dayama & Ors	... Respondents

**WITH
WRIT PETITION NO.15791 OF 2023**

Dwarka Omprakash Dayama	... Petitioner
V/s.	
Sanjivkumar Bhagirath Vyas & Ors	... Respondents

**WITH
WRIT PETITION NO.15792 OF 2023**

Dwarka Omprakash Dayama	... Petitioner
V/s.	
Akshay Sanjivkumar Vyas Through POA Sanjivkumar Bhagirath Vyas & Ors	... Respondents

Mr. Anant Vadgaonkar, for Petitioner in all Writ Petitions.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. The petitioners are legal representatives of one Omprakash Ravatmal Dayama who according to the plaintiff was partner of defendant No.1 firm.
2. According to the plaintiff, they paid amount to defendant No.1 firm . The petitioners father being partner of such firm was liable to repay such amount. After death of Omprakash, the petitioners being legal representatives are liable to repay the amount taken by defendant No.1 – firm.
3. The petitioners filed an application under Order 1, Rule 10(2) of the Code of Civil Procedure, 1908 contended that father of petitioners was never a partner of the defendant No.1 firm. Certificate to that effect was issued by the Registrar of the firm which indicates that Omprakash was never partner of defendant No.1 firm. Therefore, according to them, their name need to be deleted under Order 1, Rule 10 (2) of the Code of Civil Procedure, 1908. The provisions of Order 1, Rule 10 (2) as under:

“10 (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party

improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

4. Sub Rule (2) of Rule 10, Order 1 of the Code of Civil Procedure, 1908 confers power on the Court to add or delete parties who are necessary or improperly joined. In so far as, the power to delete existing defendants is concerned, defendant can be deleted, if such appellant proves before the Court that defendant was improperly joined. The test of necessary party will be applicable for addition of party. For the purpose of proving whether the defendant is improperly joined or not, the averments in the plaint needs to be considered. The plaintiff has averred in the suit that defendant No.1 is partnership firm. Father of petitioners was partner of such firm and petitioners being legal representatives are looking after affairs of partnership firm.

5. Once, such averments which are made in the plaint allege liability of defendant for suit claim, the plaintiffs need to be given an opportunity to prove existence of liability of defendant No.1 firm and corresponding liability of petitioners to pay the amount, if any, to plaintiff. At this stage, the Court is not supposed to conduct a mini trial to adjudicate as to whether present defendants are legally liable to pay the amount or not. Averments in the plaint which are sufficient to proceed against petitioners; hence, rejection of application by the Trial Court cannot be faulted.

6. All the writ petitions are dismissed. No costs.

(AMIT BORKAR, J.)