

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13125 OF 2016**

Hanmant Shivram Wagh,	)	
Aged about 78 years,	)	...Petitioner
Occupation : Diary,	)	(Orig. Defendant
R/o. 397, Guruwar Peth, Karad,	)	No.5/Third Party
Tal. Karad, District : Satara.	)	Intervener)

Versus

- | | | |
|---|---------------------------------------|---|
| 1 | Govind Narayan Ashtekar, |) |
| | Aged about 64 years, |) |
| | Occupation : Well to do, |) |
| | R/o. Dattaray Co-op. Housing Society, |) |
| | 1st floor, Block No.5, Khema Galli, |) |
| | Jambhali Naka, Thane (West). |) |
| 2 | Ajit Narayan Deshpande, |) |
| | Age about 57 years, |) |
| | Occupation : Service, |) |
| | R/o. Telco Company, Chinchwad |) |
| | Engineer (Testing and Design |) |
| | Department) Pune – 411 019. |) |
| 3 | Rajaram Narayan Ashtekar, |) |
| | Since deceased through his heirs and |) |
| | Legal representatives. |) |

- 3A. Girish Rajaram Ashtekar,)
Aged about 45 years,)
Occupation : Service,)
R/o. Ashwamegh Co-operative)
Housing Society, 4th Floor,)
Bhaskar Colony, Thane – 400 602.)
- 4 Pandurang Narayan Ashtekar,)
Since deceased through his heirs and)
Legal representatives,)
- 4A Vibhavari Pandurang Ashtekar,)
Aged about 65 years,)
Occupation: Household,)
R/o. Samir Society, 2nd floor,)
Block No.7, Sathe Wadi,)
Shivaji Nagar, Naupada,)
Thane (W) – 400 602.)
- 4B Manik Shrikant Kulkarni,)
Aged about 42 years,)
Occupation : Household,)
R/o. Block No.16, Sarita Nagari)
'C' Wing, Building No.6,)
4th Gala, Sinhagad Road,)
Pune – 411 030.)
- 4C Shilpa Sachin Danhage,)
Aged about 38 years,)
Occupation : Household,)
R/o. 3A, New United Co-op.)
Housing Society, Near Star City)

Theatre, Manmala Tank Road,	)	
Matunga (W), Mumbai – 16.	)	
4D Sujata Yogesh Dashputre,	)	
Aged about 42 years,	)	
Occupation : Household,	)	
R/o. 12, Hari Kunj Society,	)	
Lane No.2, Mukund Nagar, Pune-37.	)	
5 Vasudeo Narayan Ashtekar	)	Respondents
Aged about 63 years,	)	(No.1 is Orig.
Occupation : Well to do.	)	Plaintiff and Nos.2
R/o. Pratham Co-operative Housing	)	to 5 are Orig.
Society, Block No.2, Nehru Nagar,	)	Defendant Nos.1 to
Chinchwad, Pune.	)	4 respectively)

Mr. Dilip Bodake along with Ms. Shraddha Pawar, Advocate for the Petitioner.

Mr. Atharva A. Dandekar, Advocate for Respondent No.1

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

Oral Judgment :

1. Rule. Rule made returnable forthwith. By consent of the parties, the matter is heard finally.

2. Learned counsel for the petitioner submits that the respondent No.1 has filed suit against the tenants, which is pending before the trial court. In the said suit, the petitioner had filed an application to join him as a party. Accordingly, the said application was allowed by trial court and petitioner was joined as party defendant in the said suit. Thereafter, the petitioner filed written statement in the said suit. The matter was posted for cross-examination of the respondent No.1/original plaintiff. The petitioner had asked copies of examination-in-chief of plaintiff but those copies were not served upon the petitioner.

3. Respondent No.1 filed an application for deletion of name of petitioner from the suit. Learned trial court erroneously held that the petitioner is not necessary party and allowed the application and deleted the petitioner as party defendant from the said suit, which is wrong. Learned counsel further submits that when earlier petitioner was joined as party, at that time, respondent No.1 did not challenge the said order, so it had attained the finality, but, without considering this fact, trial court has erred in allowing the application filed by respondent No.1. Hence, requested to allow the petition.

4. It is the contention of learned counsel for respondent No.1 that respondent No.1 has filed suit against respondent No.2 for eviction from suit premises. Learned counsel further submits that earlier in the year 2004, respondent No.1 had filed a suit against the petitioner herein for eviction from the suit premises. The suit pending before the trial court is between respondent No.1 and respondent No.2, hence, petitioner is not necessary party in the said suit. In the said suit, the evidence of both parties was completed in the year 2004 and, thereafter, it was dragged till the year 2009 and in the year 2009, the petitioner filed an application to join him as party, which was allowed but later on his name is deleted, which is proper. Learned counsel further submits that the trial court has observed that in the suit filed by respondent No.1, petitioner is not necessary party as decree would not be effected against him. Hence, requested to dismiss the writ petition.

5. I have heard both learned counsel, perused the impugned order.

6. Admittedly, the suit is filed by respondent No.1 against respondent No.2 for eviction. The evidence of both parties have

been completed in the year 2004. Thereafter the petitioner herein filed an application to join him as a party, which was allowed. He filed written statement. Thereafter, the name of the petitioner is deleted as party defendant. In my view, as earlier the petitioner was added as party defendant and thereafter, he filed written statement, then, his name should not have been deleted as party defendant as he was earlier added as a party defendant and the said order was not challenged.

7. In view of above, I pass following order:

O R D E R

1. The impugned order dated 8th August 2016 passed by learned trial court below Exhibit "187" is quashed and set-aside. The petitioner/defendant No.5 be retained as party in the suit.
2. The application at Exhibit 185 is allowed. Respondent No.1 shall provide copy of examination-in-chief and documents relied on by him to the petitioner.
3. Since the evidence in the said suit is completed in the year 2004 and the matter is pending since then, the trial

court is requested to dispose of the pending suit as early as possible and preferably within five months from the receipt of this order. Both the parties are directed to cooperate with the trial court.

8. Rule is made absolute in above terms. The writ petition is disposed of.

9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)