

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2523 of 2020

Rajesh S/o Pandhari Patil

Versus

Krushnakumar S/o Rambislal Shukla

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Tushar Mandlekar, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 25th JULY, 2023.

In this writ petition, the Order Below Exhibit 37 dated 10th February, 2020 in Regular Civil Suit No. 533 of 2017 passed by the learned Joint Civil Judge, Junior Division & Judicial Magistrate First Class, Nagpur, rejecting the application under Order I Rule 10 of the Code of Civil Procedure, (in short 'CPC'), is under challenge.

2. The ground on which the impleadment is sought is that certain allegations are made in the suit against the petitioner. However, after going through the prayers made in the suit, it is evident that no prayer is sought against the petitioner.

3. Moreover, the application moved by the petitioner under Order I Rule 10 of CPC speaks about the fraud committed by the plaintiff and suppression of certain facts by the plaintiff in the suit.

4. However, there is not a single pleading or averment made in the application pointing out that if any order is passed in the said suit in favour of plaintiff it will adversely effect any right of the petitioner. Even there are no pleadings that how the petitioner is necessary or proper party to the said suit.

5. Merely raising a ground that, the plaintiff has committed certain frauds and he has suppressed certain facts from the Court, while obtaining certain orders, are not sufficient to get impleaded in the suit.

6. The law in this regard is very clear that necessary party is a party in absence of which no effective order can be passed and a proper party is a person in absence of whom the effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

7. The petitioner has failed to point out that he is a necessary party or proper party. Thus, in absence of any pleadings to that effect and without pointing out how the order passed in the said suit would adversely effects the rights of the petitioner, I do not find any error has been committed by the learned trial Court while rejecting the application.

8. There is no dispute that certain allegations are made in the suit. However, at the same time this fact cannot be ignored that no relief is sought against the petitioner.

9. The allegations against the petitioner appears to have made to show that the defendants have issued notice which is under challenge was issued at the instance of the petitioner. However, this would not make the petitioner either necessary party or proper party.

10. Accordingly, the petition is dismissed.

11. At this stage, learned counsel for the petitioner seeks permission to move an application afresh by making necessary pleadings.

12. Considering the fact that this petition is rejected for want of necessary pleadings. Hence, a liberty is granted to the petitioner to apply afresh after making all the necessary pleadings.

13. Learned trial Court is directed, if any, such application is filed by the petitioner, the same shall be decided in accordance with law without influenced by the observations made in the impugned order.

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[ANIL S. KILOR, J.]