



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6578 OF 2022

Dnyaneshwar Rohidas Harale
VERSUS
Narendrasingh Gagansingh Asarjanwale

Mr. A. S. Kulkarni, Advocate for the petitioners
Mr. A. H. Kasliwal, Advocate for respondent No.1
Mr. B. N. Gadegaonkar, Advocate for respondent Nos.2 and 3.

CORAM : R. M. JOSHI, J.
DATE : 21st JUNE, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order passed below Exhibit 31 in RCS No. 423/2020, whereby the learned Trial Court has reviewed order passed below Exhibit 20 whereby the petitioner was allowed to be join as defendant in the suit.
3. Learned counsel for the petitioner has drawn attention of the Court to the averments in plaint and more particularly paragraph Nos. 9 to 11 to contend that there are specific averments/allegations against the present petitioner and that he is within his right to meet those allegations. According to him, it is immaterial as to whether any relief is sought by the plaintiff against him or not.

4. Learned counsel for the respondent/plaintiff supported the impugned order by contending that the petitioner is neither necessary nor proper party to the suit as no relief is sought against him and suit is only for perpetual injunction against the present defendant.

5. A person who is necessary or proper party can be arrayed as party to the suit in view of Order 1 Rule 10 of Code of Civil Procedure. It is not mandatory that the plaintiff must have sought relief against every defendant. When *prima facie* there are specific allegations made against the present petitioner, he is within his right to meet those allegations and rebut the same. In absence of him as party to the suit, the said allegation cannot be determined. Thus, petitioner is necessary party to the suit. Learned Trial Court has committed serious error in reversing his own order passed below Exhibit 20 by passing impugned order. Even otherwise it was not open to the Court to review its own order without case being made out as contemplated by Order 47 Rules 1 and 2 of CPC.

6. In view of the above discussion, the petitioner has made out a case to cause interference in impugned order. As a result of this, impugned order dated 6th May, 2022 passed below Exhibit 31 in RCS No. 423/2020 is set aside. Order passed below Exhibit 20 stands restored.

(R. M. JOSHI, J.)

ssp