

VAISHALI
ANIL
TIKAM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5444 OF 2024

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by VAISHALI
ANIL TIKAM
Date: 2024.04.24
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Dane Realtors and Resorts Private Limited
and Ors. ... Petitioners
Versus

NSR and Facility Services Private Limited
and Anr. ... Respondents

.....
Mr. Rajdeep Lahiri i/b. Arihant Associates for Petitioners.
Mr. K.C. Pandey i/b. Prabhakar Dubey for Respondent No.1.

.....
CORAM : MILIND N. JADHAV, J.
DATED : 22nd APRIL, 2024

P.C. :-

1. Leave to annex the impugned order to the Writ Petition is allowed by the Court. The Registry shall permit the said impugned order to be appended to the writ Petition. Amendment to be carried out within one week. Re-verification stands dispensed with.
2. Heard Mr. Lahiri, learned Advocate for the Petitioners.
3. Writ Petition is taken up for hearing. Leave is granted to the Writ Petitioners to append the impugned order as directed by this Court. Certified copy of the impugned order is placed before me by the parties.
4. By virtue of the impugned order, Application / Chamber Summons No. 1859 of 2023 filed by the Plaintiff seeking deletion of Defendant

No.4 stands allowed by the Learned Trial Court. Briefly stated, summary suit is filed by one NCR and Facility Services Pvt. Ltd. versus Dane Realtors and Resorts Pvt. Ltd. Defendant No.1 is a Private Ltd. Company. Defendant No.2 Mr. Nazish Imran Furniturewala is the Director of Defendant No.1 Company. Defendant No.3 – Sarwajit Jiyalal Kori is one of the Manager of Defendant No.1. Similarly, Defendant No. 4 – Mr. Rakesh Kumar Jha is another Manager who was employed by Defendant No.1 Company.

5. Plaintiff filed application for deletion of the name of Defendant No.4, in view of the fact that the said Defendant No.4 left the services of the Defendant No.1 in the interregnum. Learned Trial Court allowed the application. Defendant Nos.1,2 and 3 have filed the present Writ Petition to oppose and challenge the order dated 18th January, 2024 of deletion of Defendant No.4 on the ground that when Defendant No.4 was employed by Defendant No.1, he was given the charge of managing the local affairs of Huma Mall, including dealing directly with the vendors therein and one of the Vendors i.e. the Plaintiff, has filed the present suit proceedings. Defendant Nos. 1 to 3 would contend that, in that view of the matter, it is the Defendant No.4 who has complete knowledge of all details relating to transactions between the Plaintiffs

and the Defendant No.1 Company. Learned Trial Court after considering the above issues raised by Defendant Nos. 1 to 3 i.e. the Petitioners, opined that the suit is filed for recovery of an amount of Rs. 5,47,000/- and admittedly, it is Defendants' case that Original Defendant No.4 who was working as Manager of Defendant No.1 has left their services rather the employment of Defendant No.1. Learned Trial Court has further opined and held that the Plaintiff being *dominus litis* is knowing against whom he wishes to proceed and not to proceed and in view of the application seeking deletion of Defendant No.4, the Plaintiff would suffer its consequences. It is seen that principal recovery is against Defendant No.1, which is a private limited company and admittedly Defendant Nos. 3 and 4 are its officers/employees. This Court is of the prima facie opinion that once the principal employer is a party, the employees need not be a proper and necessary party. Herein, there is a relationship between Plaintiff and Defendant No.1. Suit is filed against Defendant No.1 and if Defendant No.1 desires, then while adducing evidence in rebuttal to the Plaintiff's case, the Defendant No.1 can issue witness summons to a party having knowledge of the transaction, strictly in accordance with law. For this reason, each and every employee need not be a party to the suit. Defendant No.1 itself is a legal entity.

6. In view of the above observations and findings, I am in complete agreement with the reasons given by the Learned Trial Court in allowing Chamber Summons No. 1932/2023 and making the application absolute in terms of prayer clause (a) thereof. There is no ambiguity whatsoever in passing of the said order and the order dated 18th January, 2024 stands sustained and upheld. Needless to state that Defendant No.1 shall not be precluded from leading appropriate evidence in rebuttal to the Plaintiff's case and under the provisions of the Indian Evidence Act.
7. All contentions of both parties are kept expressly open.
8. Needless to state that since this is a commercial suit for recovery of amount of Rs.5,47,000/-, the Learned Trial Court is directed to dispose of the suit as expeditiously as possible.
9. With the above directions Writ petition stands disposed of.

(MILIND N. JADHAV, J.)