

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15610 OF 2023

Pushpa K. Varma & Ors.

.. Petitioners

Versus

Arcon Developers & Ors.

.. Respondents

.....

- Mr. S.A. Abhyankar a/w Ms. Jyoti Tripathi for Petitioners
- Mr. Nainesh N. Amin i/by N.N. Amin & Co for Respondent No. 1
- Mr. Dilip Rai a/w Mr. Hemant Ghadigaonkar i/by Mr. Anand Singh for Respondent Nos. 3 to 9

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024

P. C.:

1. Heard Mr. Abhyankar, learned Advocate for Petitioners; Mr. Amin, learned Advocate for Respondent No. 1 and Mr. Rai, learned Advocate for Respondent Nos. 3 to 9.

2. On 02.02.2024 after hearing learned Advocates appearing for the parties, this Court passed the following order:-

"1. Heard Ms. Abhay, learned Advocate for Petitioners and Mr. Amin, learned Advocate for Respondent No.1.

2. Though the matter which is listed is in respect of the status of Suit No.9349 of 1993 before the Trial Court and for granting extension of further time of disposal of the said suit, Mr. Amin has placed before me order dated 05.01.2024.

3. It is seen that pursuant to order dated 03.10.2023, while disposing of Writ Petition No.952 of 2020 and restoring the Chamber Summons No.1795 of 2019 to the file of the Trial Court, the learned Trial Court was directed to dispose of the suit within a period of three months from the date of that order. The suit is of the year 1993.

4. It is seen that Chamber Summons No.1795 of 2019 was heard by the Trial Court and the same is rejected. Against that rejection the Applicants

i.e. proposed Defendants have filed a fresh Writ Petition No.15610 of 2023. On 05.01.2024, that Petition was mentioned before me and on that date following order was passed:-

- “1. Heard Mr. Abhyankar, learned Advocate for Petitioner.*
- 2. This Writ Petition takes exception to the order dated 23.11.2023 dismissing the Chamber Summons No.1795 of 2019 filed by the Petitioner seeking impleadment being one of the erstwhile partners of the dissolved firm.*
- 3. Admittedly firm stood dissolved before filing of the suit. However the suit is filed by the Plaintiff and one of its partner. Application seeking impleadment by way of Chamber Summons was filed by another partner of the dissolved firm. In view of the firm has been dissolved before filing of the suit, the Chamber Summons came to be dismissed.*
- 4. At the outset, Mr. Abhyankar has drawn my attention to the provisions of Section 47 of the Indian Partnership Act, 1932 (for short ‘the said Act’) and would contend that continued authority of the partner for the purpose of winding up of the firm continues in respect of all transactions which were begun but unfinished at the time of dissolution.*
- 5. On reading of Section 47 of the said Act, I agree with the submissions made by Mr. Abhyankar. In the present case, suit for specific performance has been filed by the firm in respect of an agreement executed by the firm at the then time. Subsequently, firm was dissolved. The suit though filed thereafter cannot exclude impleadment of the proper and necessary party namely partner of the erstwhile firm itself who claims to have also contributed to the transaction in question.*
- 6. One of the submissions of Mr. Abhyankar is that he has paid valuable consideration in respect of the very agreement of which specific performance is been sought in the suit proceedings and therefore he is a proper and necessary party. This fact read with the provisions of Section 47 of the said Act would therefore, according to him, entitle the Petitioner to be impleaded either as Plaintiff or even transposed as Defendant in the suit proceedings.*
- 7. An arguable case has been made out by Mr. Abhyankar for issuance of notice. Suit is filed in 1993. Though it is extremely late in the day, Mr. Abhyankar would however fairly inform the Court that pendency of Suit came to the Petitioners’ knowledge only in the year 2019. Thereafter COVID-19 Pandemic and lock-down happened despite which the Chamber Summons was filed by the Petitioner in the year 2019 itself. He would inform the Court that evidence of the Plaintiff is completed and Defendants’ evidence is in progress before the learned Trial Court. The issue raised in the present Writ Petition against the impugned order requires consideration.*

8. Hence, issue notice to Respondents. Petitioners are directed to serve the Respondents. Humdast permitted. In addition to Court's notice, Petitioners are permitted to serve copy of this order and Writ Petition on the Respondents within a period of one week and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Affidavit-in-Reply to be filed by Respondents within a period of two weeks from today. Rejoinder, if any, to be filed within a week thereafter.

9. The learned Trial Court is directed by this Court to defer the proceedings in the Suit until the present Writ Petition is heard for admission. It is clarified that Writ Petition shall be disposed finally at the stage of admission itself. Parties as well as learned Trial Court are directed to act on an authenticated copy of this order.

10. Liberty to apply.

11. Stand over to **02nd February, 2024.**"

5. Mr. Amin appearing for Respondents who are Plaintiffs before the Trial Court would submit that the facts and averments which are noted in paragraph No.3 of the order dated 05.01.2024 are incorrect. He would submit that Chamber Summons has been rightly rejected by the learned Trial Court since the impleadment sought by legal heirs of two partners of the erstwhile partnership firm cannot be allowed to join at a belated stage after 30 long years since their predecessors-in-title who were the two erstwhile partners had during their lifetime refused to be impleaded in the suit proceedings in the year 1993. He would submit that both the partners at the then time has sought dissolution of the firm.

6. Mr. Amin would submit that if the two erstwhile partners of the firm have prosecuted the Suit for 31 years and have no grievance with respect to continuation of the partnership firm as on date, the grievance, if any, of the legal heirs of the erstwhile partners will only be in respect of accounts and their impleadment is not relevant in the Suit. He would submit that they may take out appropriate proceedings as available to them in law to claim the share of their predecessor-in-title who was a partner of the firm. He would submit that the firm's activities have been carried on by the two incumbent partners of the firm at present.

7. List Writ Petition No.15610 of 2023 on **16th April, 2024 at 02.30 p.m.** for hearing."

3. Today I have heard the learned Advocates appearing for the parties. Admittedly the Suit is prosecuted by two partners of the partnership firm whereas Petitioners are legal heirs and descendants of the two other partners of the partnership firm. Admittedly in the

present case the partnership firm stands dissolved and it is presently run by the Respondents, however admittedly after dissolution the accounts have not been settled, resultantly leading the Petitioners to intervene in the pending Suit before the learned Trial Court. I have impressed upon Mr. Abhyankar that no purpose would be served for the Petitioners to intervene in the Suit which is being prosecuted on behalf of the firm since it would lead to unnecessary inevitable delay. Mr. Amin would fairly contend and admit that the accounts of the dissolved partnership firm will have to be settled and resolved since admittedly Petitioners would be entitled to the same through the two erstwhile partners of the firm. He would submit that any affirmative decision in the Suit proceedings prosecuted by the partnership firm may enure to the benefit of the firm and consequently its partners including the Petitioners. Admittedly, since years together, the firm is run by its two present partners and they are not denying the right and share of the Petitioners through the erstwhile partners.

4. After hearing Mr. Amin, I have impressed upon Mr. Abhyankar that there is no reason as to why the Petitioners should seek impleadment in a Suit for specific performance filed on behalf of the firm and delay and protract the suit proceedings, rather it would enure to their benefit if the Suit is determined by the learned Trial Court in favour of the firm on merits. Suit is of 1993. If that be the case it

would enure to the benefit of the firm as also its partners and the Petitioners who are claiming through the firm's two erstwhile partners. Hence, I am inclined to pass directions directing the Respondent firm to put the Petitioners on notice of the decision in the suit proceedings i.e. Suit No. 9349 of 2023 pending before the learned Trial Court within a period of one week from the date of its decision by the Trial Court. Petitioners after receiving the copy of the said decision shall consider the same and depending upon the outcome of the decision in the said Suit, Respondent No. 1 firm and its present partners in conjunction with the Petitioners shall resolve their disputes by appropriate means as available to them in law. Needless to state that the present partners of Respondent No. 1 firm shall not derive any undue advantage unto themselves by virtue of the decision that would be passed in favour of the firm by the learned Trial Court and shall keep the Petitioners informed about the same. All contentions of the Petitioners as also Respondents are expressly kept open.

5. In the meanwhile, it shall be open for Respondent No. 1 firm as also its current partners to resolve the issue of settling of accounts with the legal heirs of its two erstwhile partners who are the Petitioners before me without prejudice to their rights and contentions.

6. With the above directions, impugned order dated 10.12.2019 is sustained without prejudice to the rights and contentions of the Petitioners and in view of the directions passed hereinabove. Learned Trial Court is directed to decide and dispose of Suit No. 9349 of 1993 as expeditiously as possible and in any event within a period of four months from today.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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