

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4221 OF 2024

Shrikant Shivaji Todkar

.. Petitioner

Versus

Shree Engineering Works

.. Respondent

-
- Mr. Nikhil Wadikar (appeared through VC) a/w Mr. Pradip Zende
i/by Mr. Nandu Pawar for Petitioner

.....
CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2024

P. C.:

1. Heard Mr. Wadikar, learned Advocate for Petitioner.
2. Mr. Wadikar would submit that according to him the Suit filed by Respondent (Org. Plaintiff) before the Trial Court) i.e. Regular Civil Suit No. 558/2021 has become infructuous in view of the subsequent developments. In that view of the matter, he would submit that by notice dated 23.09.2022, Petitioner who is the sole Defendant in the Trial Court and the only other partner besides Snehanakita Pankaj Pawar has retired from the partnership firm. The reasons are enumerated in paragraph Nos. 3 to 5 of the notice dated 23.09.2022 which is at Exh. E, page Nos. 325-327 of the Petition. Petition is filed with respect to a challenge maintained to allow amendment to the Suit plaint. However if the Petitioner is right in the first instance, that he has already retired from the partnership firm and no longer a

partner in the partnership firm, then this Court will have to consider whether the partnership firm is in existence or otherwise.

3. It is contended by Mr. Wadikar that partnership firm cannot be maintained by the Plaintiff being a single partner thereof. Suit is filed seeking injunction against Defendant from interfering with the business of the partnership firm. Hence maintainability of the Suit itself is a question which will be required to be answered by the Respondent in the present Petition.

4. In view of the above, an arguable case is made out by Mr. Wadikar for issuance of notice and calling for reply from Respondent.

5. Issue notice to the Respondent made returnable on 17.04.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondent and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

6. Respondent is directed to remain present either through its authorized representative or through its Advocate on the next adjourned date. It is made clear that if Respondent remains absent

despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondent.

7. In the meanwhile, proceedings before the learned Trial Court being RCS No. 558/2021 shall stand stayed.

8. Stand over to 17th April, 2024 at 2:30 p.m.

Amberkar

[MILIND N. JADHAV, J.]

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