

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17560 OF 2024

M/s. Jhamtani Realty Pvt. Ltd. and Anr.

...Petitioners

V/s.

State of Maharashtra and Ors.

...Respondents

SATISH
RAMCHANDRA
SANGAR

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SATISH RAMCHANDRA
SANGAR
Date: 2024.12.19
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Ms.Minal Chandnani:-	Advocate for Petitioners.
Mr.A.A.Alaspurkar : AGP:-	On behalf of Respondent No.1 -State.

CORAM : S. M. MODAK, J.

DATE : 9th DECEMBER 2024

P.C. :-

1. Heard learned Advocate for the Petitioners – Defendant Nos.30 and 31 (newly added Defendants). (Page No.41).
2. They have been added in view of the order passed on 5th September 2024 by the trial Court – Pune. The trial Court has allowed the amendment in the pleading and addition of party on the basis of Application filed by the Plaintiff on 11th July 2024. The present Petitioners were issued notice and they have filed a reply opposing the prayers. It is on Page No.442.
3. There is a challenge to this order for the reason, the order is

vague and it does not deal with the issues need to be considered while deciding such prayer. The impugned order reads thus:-

“Heard Advocates. In order to adjudicate the real controversy in the suit, I found it just and proper to implead proposed defendants in the suit as necessary parties. Hence, the proposed defendants be added as defendants in the suit. Plaint to amended within limitation.”

4. The trial Court has allowed the prayer by applying the test of *“deciding the real controversy in the suit”*. Even, I find, the order is very cryptic. The trial Court has only recorded the conclusion but the conclusion is not supported by reasoning. The trial Court ought to have dealt with the averments in the Application on one hand and the objection taken by these Petitioners on the other hand.

5. After considering the rival contentions, the trial Court ought to have arrived at a conclusion in either way. The reasoning is the soul of any order. I find this missing. The order cannot be sustained.

6. I am inclined to remand the matter. There is no need to issue notice to Respondents because this Court is not hearing the matter on merits, that is to say, whether these Petitioners need not be joined as party Defendants or whether they need to be joined as party Defendants. Even, after remand, the Plaintiff is at liberty to convince

the trial Court about allowing this Application.

7. In view of that, following order is passed:-

ORDER

- (i) The **order dated 5th September 2024** passed by the learned Civil Judge, Senior Division – Pune in Special Civil Suit No.759 of 2013 is **set aside**.
 - (ii) The trial Court to hear both the parties on the basis of the Application dated 11th July 2024 and to pass necessary orders.
8. In view of the above, **Writ Petition stands disposed of.**

[S. M. MODAK, J.]