



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3828/2022

Shri Manohar S/o Tanbaji Dangre

...Versus...

The Liquidator, M/s Sunil Hi-Tech Engineers Ltd. Mumbai - 400053

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.A. Kalbande, Advocate for petitioner
Mr. S.V. Bhutada, Advocate for respondent

CORAM : N.R. BORKAR, J.

DATE : 25/06/2024

1. Heard.
2. The present petition takes exception to the order dated 04/04/2022 passed by the Ad-hoc District Judge, Nagpur below Exh.11 in Regular Civil Appeal No.247/2018.
3. The petitioner herein had filed the suit for declaration, mandatory injunction and damages.
4. The trial Court, by order dated 17/07/2017, pursuant to the application filed by the original defendants under Order 7 Rule 11 of the Code of Civil Procedure, rejected the plaint. The trial Court has rejected the plaint mainly on the ground that considering the nature of relief sought by the petitioner M/s Sunil Hi-Tech Engineers Ltd., a company incorporated under the Companies Act, 1956 was the necessary party to the suit. The trial Court has held that

allowing the petitioner to implead M/s Sunil Hi-Tech Engineers Ltd., as a party to the suit would be now a futile exercise as suit against it would be barred by limitation. The trial Court accordingly rejected the plaint.

5. The petitioner, in the appeal filed by him against the order of trial Court rejecting the plaint, filed an application that the company M/s Sunil Hi-Tech Engineers Ltd., has gone under liquidation and liquidator is appointed and thus petitioner be permitted to implead the liquidator as party respondent to the appeal. This application was initially allowed, however, by the order impugned the order allowing the application came to be recalled.

6. The learned counsel for the petitioner submits that the review application filed by the respondent - liquidator was not maintainable and therefore the appellate Court erred in allowing it. However, the fact remains that M/s Sunil Hi-Tech Engineers Ltd., was not a party to the suit and on that ground the trial Court has rejected the plaint. Unless the same is set aside and the petitioner is permitted to implead M/s Sunil Hi-Tech Engineers Ltd. as a party, there arises no question of impleading the liquidator as party respondent to the appeal. Considering the facts and circumstances, it would be appropriate to grant liberty to the petitioner to apply afresh in the event order of trial Court is set aside and he is allowed to implead M/s Sunil Hi-Tech Engineers Ltd., as party defendant to the suit.

7. The appellate Court shall endeavour to decide the appeal within a period of four months from the date of receipt of copy of this order.

8. The writ petition is disposed of in the aforesaid terms. No order as to costs.

(N.R. BORKAR, J.)

Wadkar