

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 287 OF 2023
WITH
INTERIM APPLICATION NO. 12641 OF 2023

1. Shevanti Dadoba Nashte
2. Shailaja Pravin Nashte ...Applicants

Versus

1. Bhikaji Vasudeo Lad (since deceased)
through L.R.s - Sumitra Bhikaji Lad
2. Umesh Bhikaji Lad
3. Sanjay Bhikaji Lad
4. Ramesh Bhikaji Lad
5. Sanyukt Maharashtra Co.op. HSG
6. Sandeep Ramesh Solanki
7. Sagar Ramesh Solanki
8. Suvarna Ramesh Solanki

...Respondents

SNEHA
NITIN
CHAVAN

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Mr. Datta Pawar a/w Ms. Pushpa Thapa and for the Applicants.
Mr. Yuvraj Narvankar a/w Raufa Shaikh a/w Rahul Patil for Respondent
Nos. 6 to 8.
Mr. Chetan Patil i/b Mandar Bagkar for Respondent No.5.

CORAM : M.M. SATHAYE, J.
DATE : 15th APRIL 2025
(IN CHAMBER)

JUDGMENT

1. Heard learned counsel for the parties.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 ('CPC' for short), the Applicants are challenging the order dated 27.03.2023 passed by the District Judge-3, Kolhapur, granting leave to Respondent Nos. 6 to 8 to file appeal against the

Judgment and Decree dated 15.02.2023 passed by 2nd Joint Civil Judge, Senior Division, Kolhapur in Sp. Civil Suit No. 361 of 2000 ('the said suit' for short).

3. The Applicants are Plaintiffs and Respondent Nos. 1 to 5 are original Defendants. Respondent Nos. 6 to 8 are third parties (transferee pendent lite) who have been granted leave to file appeal which is numbered as Reg. Civil Appeal No. 61 of 2023.

4. Few relevant facts necessary for disposal of this application are as under. In the year 2000, the present Applicants filed Special Civil Suit No. 361 of 2000 against present Respondent Nos. 1 to 5 seeking specific performance of Agreement dated 12.09.1994 in respect of suit property, which is Plot No. 14 in Respondent No. 5 Society. During pendency of this suit, Respondent Nos. 6 to 8 filed an application (Exh.101) under Order I Rule 10 of the CPC for their impleadment in the said suit, on the basis of alleged lease deed dated 08.03.2004 executed by the said society in their favour after surrender of the suit property by Respondent Nos. 3 & 4. It is the case of Respondent Nos. 6 to 8 that they have invested considerable amount for the leasehold rights in the suit property and they are in possession of the same. The Trial Court rejected the said application Exh. 101 refusing to implead Respondent Nos. 6 to 8 vide its order dated 18.11.2017. This order was challenged by Respondent Nos. 6 to 8 by filing Writ Petition No. 4441 of 2018 in this Court. This petition was rejected by order of this Court dated 18.07.2019. One of the reasons was that Respondent Nos. 6 to 8 have filed the application belatedly when they had knowledge of the dispute and at a stage when suit was ripe for arguments. Incidentally, 3½ years thereafter, the suit was finally heard and decreed on 15.02.2023,

granting specific performance directing Respondent Nos. 2 to 4 to execute the sale deed in favour of the Applicants. Respondent Nos. 6 to 8 thereafter filed an application before the Appellate Court seeking leave/permission to file first appeal, which application is allowed by the impugned order. In these circumstances, the present revision application is filed.

5. Mr. Pawar, learned counsel for the Applicants/Plaintiffs submitted that the impugned order is passed without notice to them and without giving them an opportunity of being heard. He submitted that CPC is a procedural law and notice of the said application Exh. 101 ought to have been given to the Applicants. That the impugned order is against the principle of natural justice. He has relied upon Section 141 and Section 142 of the CPC. He further submitted that Respondent Nos. 6 to 8 having failed in impleadment, which order is confirmed by this Court, could not have been granted leave to file appeal, specially when this fact was not disclosed to the Appellate Court. He submitted that refusal to implead Respondent Nos. 6 to 8 having attained finality, the order acts as *res-judicata* (or at least constructive one) against them and therefore leave to file appeal could not have been granted. Mr. Pawar has also made submissions about the merits of the case of Respondent Nos. 6 to 8.

6. On the other hand, Mr. Narvankar, learned counsel appearing for Respondent Nos. 6 to 8 submitted that rejection of application under Order I Rule 10 of the CPC will not *per se* operate as a bar or ground to reject their application seeking leave to file appeal. He submitted that there is no clear provision under law making it necessary to issue notice to the Plaintiffs in situation like this. He submitted that leave to file

appeal is akin to leave to file suit as contemplated under CPC or Letters Patent, which is between the Court and the party seeking such leave. He submitted that since Respondent Nos. 6 to 8 claim to have leasehold and possessory rights in the suit property, they are directly and prejudicially affected by the Judgment and Decree of the Trial Court. That therefore leave to appeal has been legally and properly granted. He lastly submitted that there is no suppression by Respondent Nos. 6 to 8, in as much as, along with the application seeking leave to file appeal, all the necessary documents including the orders of the Trial Court rejecting their application for impleadment as well as order of this Court in the aforesaid writ petition, were annexed and the Appellate Court had considered it. He has relied upon **H. Anjanappa & Ors. v/s. A. Prabhakar & Ors. [2025 SCC Online SC 183]** & **Vishnubhai Arjanji Vaghela v/s. Rameshchandra Khodidas Patel and Ors. [MANU/GJ/0909/2016]** in support of his case.

7. I have carefully considered the rival submissions of the learned counsel and perused the record with their assistance.

8. The questions that primarily fall for my consideration are (i) whether rejection of impleadment application by Respondent Nos. 6 to 8 created any bar or sufficient ground for not granting leave to file appeal ? and (ii) whether leave to file appeal could have been granted without notice to the Applicants ?

9. At the outset, it must be noted that in the case of **H. Anjanappa (supra)**, the Hon'ble Supreme Court in a latest Judgment dated 29.01.2025, after considering various earlier judgments on the very same issue involving principles governing grant of leave to file

appeal as well as the effect of rejection of impleadment application under Order I Rule 10 of the CPC and interplay between the two, has authoritatively held as under :

“42. On the anvil of the decisions cited supra, the instant case may be examined. Admittedly, the application filed by the Respondent Nos. 1 and 2 respectively under Order I Rule 10 CPC for being impleaded as party to the suit was rejected by the Trial Court. The said order was not challenged. In view of the authoritative pronouncement of the cases cited supra, the conclusion is irresistible that rejection of the application filed under Order I Rule 10 CPC is *per se* not a ground to reject the application for leave to file appeal. The appellate court has to see whether the transferee *pendente lite* is aggrieved by a decree or is otherwise prejudicially affected by it. The appellate court has to examine that if the decree is allowed to stand, the same will operate *res judicata*.”

[Emphasis supplied]

10. Therefore, it is clear that rejection of application filed by Respondent Nos. 6 to 8 for impleadment and its confirmation by this Court, *per se* is not a bar or ground to reject their application for leave to file appeal.

11. It is true that the impugned order is not happily worded about finding how and why Respondent Nos. 6 to 8 are affected. A little more could have been written about the said core aspect. Be that as it may.

12. It is noted that Respondent Nos. 6 to 8 claim to be in possession of the suit property on the basis of leasehold rights from the Society. It is also noted that both, the application for impleadment as well as the writ petition were contested by the Applicants on merits

disputing alleged rights and possession of Respondent Nos. 6 to 8. In such situation, on the face of the record, decree of specific performance directly affecting title of the suit property, will prejudicially affect rights of Respondent Nos. 6 to 8.

13. About the issue as to whether notice was necessary to be given to the Applicants before taking decision on leave to file appeal, it is noted that in almost identical set of facts before the Gujarat High Court in the case of **Vishnubhai Arjanji Vaghela (supra)**, an argument was advanced drawing a parallel from granting leave to file suit under section 92 of the CPC. There, the question whether notice should be served upon other side or not was considered. The Gujarat High Court, relying upon a Division Bench Judgment of Punjab and Haryana High Court in the case of **Lachhman Dass Udasi and Ors. Vs. Ranjit Singh and Ors. [MANU/PH/0098/1987]**, has held in favour of an argument that it is not necessary to serve notice upon the other side before granting leave. The reasoning adopted by the Division Bench of the Punjab and Haryana High Court, which is followed by the learned single Judge of the Gujarat High Court, is that issuing notice and hearing other side at the stage of leave to file suit/appeal will amount to trying the suit/appeal twice over and therefore not necessary. I agree with the said view. In any case, all the parties will be heard at the time of hearing the appeal/s.

14. In light thereof, once it is found that the rights of Respondent No. 6 to 8 are prejudicially affected by the decree in the suit, the necessary test is passed. Useful reference can be made to para 43(v) of the aforesaid judgment of **H. Anjanappa (supra)**. Therefore leave to file appeal is rightly granted under impugned order. The learned Judge of

the Appellate Court has recorded that he has gone through list of documents filed with application. It is noted that at Sr. Nos. 15 and 16 of the said list, both the orders in impleadment application and writ petition were produced on record. Therefore there is no suppression of facts.

15. Overall, there is no reason to interfere with the impugned order in the limited revisional jurisdiction of this Court. The revision application is accordingly dismissed. Pending interim application is also dismissed. No order as to costs.

16. Rival contentions of parties on merits at the time of hearing of appeal/s are kept open.

17. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)