

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9778 OF 2024

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2025.03.10
17:21:44 +0530

Anju Akhil Rastogi

...Petitioner

vs.

The Bombay Mercantile Co. Op. Bank Ltd.

And Others

...Respondents

Mr. Shakeeb Shaikh a/w. Ms. Hude Diamondwala (Hude) i/b.
Diamondwala & Co., for the Petitioner.

Ms. Puja Acharekar, for Respondent Nos. 1 and 2.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 05, 2025

ORDER

1. Heard the learned counsel for the parties.
2. The petitioner/ plaintiff has invoked the writ jurisdiction aggrieved by an order dated 6th February, 2024 passed by the learned Judge, City Civil Court in Chamber Summons No. 255 of 2023, in suit No. 4588 of 2011 taken out by the plaintiff to add Yashi Akhil Rastogi, her son as co-plaintiff to the suit.
3. By the impugned order, the learned Judge rejected the Chamber Summons observing, inter alia, that the proposed plaintiff has no right and interest in the subject matter of the suit to justify his impleadment as co-plaintiff.
4. The petitioner instituted the suit for refund of amount, the amount which the plaintiff claimed to have kept in fixed deposit

with defendant No. 1 Bank along with interest thereon @ 9.5 % p.a. from 1st January, 2011, and other monetary reliefs.

5. In the said suit, the plaintiff took out the Chamber Summons asserting, inter alia, that at the time of institution of the suit, the plaintiff was unaware that the proposed plaintiff was a joint account holder in the said fixed deposit account and a signatory thereto. The proposed plaintiff was a beneficiary under the said account. It was, therefore, necessary to implead the proposed plaintiff as plaintiff No. 2.

6. The defendant no. 1 Bank opposed the impleadment.

7. By the impugned order, the learned Judge was persuaded to reject the Chamber Summons noting that not only there was no material to substantiate the claim of the plaintiff that the proposed plaintiff was a joint account holder but also the record indicated that the proposed plaintiff was a nominee in the said fixed deposit account. The plaintiff has thus approached the Court on an incorrect premise. Therefore, the petition deserved to be rejected.

8. Mr. Shaikh, learned counsel for the petitioner, submitted that though the assertion that the proposed plaintiff was a joint account holder was not factually correct, yet alongwith an application dated 30th October, 2023 the plaintiff had brought material on record to show that the proposed plaintiff was joint account holder in an

account maintained with Canara Bank, from the proceeds of which the fixed deposit receipt in question was created. The proposed plaintiff thus had a right and interest in the corpus of the fixed deposit. It was further submitted that the plaintiff was of advanced age and it was necessary to implead the proposed plaintiff as co-plaintiff to effectively prosecute the suit. The plaintiff being *dominus litis*, the defendant No. 1 could not have objected to the impleadment of the plaintiff, urged Mr. Shaikh.

9. I find it difficult to accede to the aforesaid submission. Firstly and incontrovertibly, the plaintiff approached the Court with a factually incorrect case that the proposed plaintiff was a joint account holder. Had that been the case, completely different considerations might have come into play. Once the said fact was negatived, the question as to whether the proposed plaintiff is a necessary or proper party was required to be examined. The learned Judge, City Civil Court, upon evaluation of the material, found that the plaintiff is neither a necessary nor a proper party. By no stretch of imagination can it be said that only for being the son of the plaintiff, the proposed plaintiff becomes either necessary or proper party. It must be noted that the basis of the suit is the jural relationship between the plaintiff and defendant No. 1 which stems out of a contract. The son of the plaintiff has definitely no right, title

and interest in the subject matter of the suit.

10. The submission that the money which was standing to the credit of the account of the plaintiff and the proposed plaintiff was utilized to create the subject fixed deposits and, therefore, the proposed plaintiff has interest in the subject matter of the suit, does not advance of the cause of the submission on behalf of the plaintiff. The extent of the title of the proposed plaintiff over the said corpus is not germane to the adjudication of the dispute in the suit. Thus, I do not find any infirmity in the impugned order.

11. The petition thus stands dismissed.

(N. J. JAMADAR, J.)