

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11425 OF 2024

Aakash Educational Services Limited,
formerly known as Aakash Educational Services
Private Limited, which has been converted into a
Public Limited Company from a Private Limited
Company, a body corporate constituted and
incorporated under the provisions of Indian
Companies Act 1956/2013 having its changed
registered address/office at Aakash Tower/Aalcat
Tower, Plot No. 8, Pusa Road, Karol Bagh, New
Delhi 110005.

..Petitioner

Versus

1. Lata Bhagwanji Shah
Adult, Indian Inhabitant of Mumbai,
Age: about 54 years, Occupation:
Business/Housewife, Mobile No. 989235499.

2. Bhagwanji Lalji Shah,
Adult, Indian inhabitant of Mumbai,
Age: about 58 years, Occupation : Business,
Mobile No. 9892359499,
email:bhagwanjishah@gmail.com both the
Respondents are family and having their
residence address at 3, Bharat Niwas, Vishwa
Bharti CHS Ltd, V.P. Road, Andheri (W),
Mumbai 400 058.

3. J.C. Chaudhary,
Adult (Full name Jagdish Chand Chaudhary)
Age: 74 Years, Occupation: Business/Profession,
former Chairman and Managing Director of
Aakash Educational Services Limited; having
address at Aakash Tower/Aakash Tower,
Plot No. 8, Pusa Road, Karol Bagh,
New Delhi 110 005.

ARUN
RAMCHANDRA
SANKPAL

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by ARUN
RAMCHANDRA
SANKPAL
Date: 2025.11.03
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4. Aakash Chaudhary,
Adult, Full name not known, Aged: 44 Years,
Occupation: Business/Profession former
Managing Director and Co-Promoter of Aakash
Educational Services Limited, having address at
Aakash Tower/Aakash Tower, Plot No. 8,
Pusa Road, Karol Bagh, New Delhi 110 005.

...Respondents

WITH

WRIT PETITION NO. 11426 OF 2024

Aakash Educational Services Limited,
formerly known as Aakash Educational Services
Private Limited, which has been converted into a
Public Limited Company from a Private Limited
Company, a body corporate constituted and
incorporated under the provisions of Indian
Companies Act 1956/2013 having its changed
registered address/office at Aakash Tower/Aalcat
Tower, Plot No. 8, Pusa Road, Karol Bagh, New
Delhi 110005.

..Petitioner

Versus

1. Mansukh Lalji Shah,
Adult, Indian Inhabitant of Mumbai,
Age: about 56 years, Occupation: Business,
Mobile No. 989235499.

2. Bhagwanji Lalji Shah,
Adult, Indian inhabitant of Mumbai,
Age: about 58 years, Occupation : Business,
Mobile No. 9892359499,
email:bhagwanjishah@gmail.com both the
Respondents are family and having their
residence address at 3, Bharat Niwas, Vishwa
Bharti CHS Ltd, V.P. Road, Andheri (W),
Mumbai 400 058.

3. J.C. Chaudhary,
Adult (Full name Jagdish Chand Chaudhary)
Age: 74 Years, Occupation: Business/Profession,
former Chairman and Managing Director of

Aakash Educational Services Limited; having address at Aakash Tower/Aakash Tower, Plot No. 8, Pusa Road, Karol Bagh, New Delhi 110 005.

4. Aakash Chaudhary,
Adult, Full name not known, Aged: 44 Years,
Occupation: Business/Profession former
Managing Director and Co-Promoter of Aakash
Educational Services Limited, having address at
Aakash Tower/Aakash Tower, Plot No. 8,
Pusa Road, Karol Bagh, New Delhi 110 005.

...Respondents

Mr. Omar K Shaikh, with Sahil Salvi and Manohar Shelar, i/b Vikas
Salvi & Associates, for the Petitioner.

Mr. Pankaj S Pandey, with Smit Nagda, for Respondent Nos. 1 and 2.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 22nd AUGUST 2025

PRONOUNCED ON: 3rd NOVEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. These Petitions under Article 227 of the Constitution of India, call in question the legality, propriety and correctness of identical orders dated 29th June 2024, passed by the learned Judge, Court of Small Causes, Bandra, Mumbai, thereby rejecting Applications preferred by the Defendant No.1 to delete the Defendant Nos. 2 and 3 from the array of the Defendants, in the respective Suits.

3. As the common questions of facts and law arise for determination in an almost identical fact-situation, both the Petitions were heard together and are decided by this common judgment.

4. Facts in Writ Petition No. 11425 of 2024 are noted in a little detail followed by the facts in Writ Petition No. 11426 of 2024, in brief.

5. The Petitioner-the Defendant No.1 is a private limited company incorporated under the Companies Act, 1956. The Defendant No.1 was formerly known as Aakash Educational Services Private Limited. The Defendant No.2 is the Managing Director of the Defendant No.1-company. The Defendant No.3 is the CEO and Whole-time Director of the Defendant No.1-company. The Plaintiffs are the owners and landlord of the premises bearing Premises No. 2(part) and Premises No. 2 and 3 situated at Madheshwar Cooperative Society Limited, Andheri (West), Mumbai (“the Suit premises”).

6. On 2nd May 2016 a Leave and Licence Agreement came to be executed by and between the Plaintiffs and Aakash Educational Services Private Limited, the precursor of the Defendant No.1, to allow the Defendant No.1 to use and occupy the Suit premises as a licensee for a term of 60 months. The Leave and Licence Agreement contained terms, *inter alia*, as to payment of the licence fee and provisions for payment of the penalty for delayed payment of licence fee and overstay.

7. It is the claim of the Plaintiffs that though the term of the licence expired on 31st March 2021, the Defendants did not vacate the Suit premises. The Defendants made representations for the renewal of the licence for a further term. However, the Defendants did not take steps to execute a further Agreement to renew the licence nor the Defendants paid the licence fee for the period for which they continued to occupy the Suit premises, after the expiry of the term of licence. Instead, the Defendants unjustifiably insisted for refund of the security deposit, which was to be repaid simultaneous with vacating the Suit premises.

8. Eventually the Defendants forwarded the keys of Premises Nos. 2 and 3 through DTDC Couriers which were received by the Plaintiffs on on 14th September 2021. In fact, the Defendants overstayed and occupied the Suit premises unauthorisedly from 1st April 2021 to 14th September 2021. Moreover, upon inspection of the Suit premises, it transpired that the Defendants had caused extensive damage to the Suit premises and, thereby, violated the terms and conditions of the Leave and Licence Agreement. The Plaintiffs thus instituted the Suit for recovery of the unpaid licence fee, liquidated damages and licence fee at the enhanced rate under Section 24(2) of the Maharashtra Rent Control Act, 1999 (“the Rent Act, 1999”)

9. In Writ Petition No. 11426 of 2024, the facts are identical with the change that Premises No. 4 situated at Madheshwar Cooperative

Society Limited, was given on licence to the Defendant No.1 under the Leave and Licence Agreement dated 2nd May 2016.

10. In both the Suits, the Defendant No. 1-company filed Applications purportedly under Order I Rule 10(2) read with Order VII Rule 11 and Section 151 of the Code of Civil Procedure, 1908 (“the Code”) seeking a direction to the Plaintiffs to delete the Defendant Nos. 2 and 3 from the array of the Defendants. The substance of the Applications was that Leave and Licence Agreements were executed between the Plaintiffs and Defendant No.1-company. Neither the Defendant Nos. 2 and 3 were the parties to the said Leave and Licence Agreement in their individual capacity or otherwise, nor the Defendant Nos. 2 and 3 had given any personal guarantee in the event of default in compliance of the terms and conditions of the Leave and Licence Agreement by the Defendant No.1. Demand notices were addressed to the Defendant No.1-company. The Defendant Nos. 2 and 3 were not personally liable to discharge the debts of the Defendant No.1. Thus, there was no cause of action qua the Defendant Nos. 2 and 3 nor the Plaintiffs disclosed any specific role of the Defendant Nos. 2 and 3 so as to implead them as party-Defendants, apart from the fact they held the position of Managing Director and CEO and Whole time Director of the Defendant No.1-company.

11. The Plaintiffs resisted the Applications. At the outset it was contended that since the Defendant Nos. 2 and 3 have not sought their

deletion from the array of the Defendants, the Defendant No.1-company has not locus to file the Application to delete the Defendant Nos. 2 and 3. It was refuted that the Defendant Nos. 2 and 3 had no role in the transaction which formed the subject matter of the Suits. The Resolution dated 22nd February 2016 was signed by the Defendant No.2 in the capacity of the Managing Director of the Defendant No.1-company, vide which the Board had resolved to take the Suit premises on leave and licence basis. Likewise, the letter of authority in favour of the Branch Manager to execute the Leave and Licence Agreement was issued by the Defendant No.3 in the capacity of the CEO and whole-time Director of the Defendant No.1-company. In any event, the Defendant Nos. 2 and 3 are vicariously liable for the acts and deeds of the Defendant No.1-company. Lastly, the Plaintiffs being *dominus litis* cannot be deprived of the right to implead the parties against whom the Plaintiffs seek the reliefs.

12. By the impugned orders, the learned Judge, Court of Small Causes was persuaded to reject the Applications observing, *inter alia*, that from the perusal of the averments in the Plaint, the role of the Defendant Nos. 2 and 3 becomes *prima facie* evident. In the view of the learned Judge, in accordance with the provisions contained in Section 168 of the Companies Act, 2013, the Defendant Nos. 2 and 3 cannot

wriggle out the liability. Thus, the Defendant Nos. 2 and 3 cannot be deleted from the array of the Defendants.

13. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

14. I have heard, Mr. Omar K Shaikh, the learned Counsel for the Petitioner, and Mr. Pankaj S. Pandey, the learned Counsel for the Respondent Nos. 1 and 2, at some length. The learned Counsel took the Court through the pleadings and the material on record.

15. Mr. Shaikh mounted a multi-pronged challenge to the impugned order. Firstly, the learned Judge completely misread and misconstrued the averments in the Plaint qua the role of the Defendant Nos. 2 and 3. Inviting attention of the Court to the averments in the paragraph 3 of the Plaint, wherein the Plaintiffs sought to rope in Defendant Nos. 2 and 3 by asserting that the Defendant Nos. 2 and 3 were responsible for the conduct of the business and day to day affairs of the Defendant No.1-company and also liable for the acts of the company, Mr. Shaikh would urge that the Plaintiffs have sought to draw analogy from the provisions which provide for the vicarious liability of the directors of the company for commission of offences by the company. The learned Judge adverted to these very averments to hold that the role of Defendant Nos. 2 and 3 was evident. In the process, the learned Judge lost sight of the juristic character of a corporate entity, submitted Mr. Shaikh.

16. Secondly, the learned Judge lost sight of the nature of the Suit claim. What the Plaintiffs were essentially seeking were the unpaid licence fee, interest thereon and compensation for damage to the Suit premises. The entire claim is of monetary nature. Thus the Defendant Nos. 2 and 3 cannot be said to be either necessary or proper parties to the Suit.

17. Thirdly, in a suit for recovery of licence fee only the Licencee is the necessary party. No other person can be legitimately impleaded as party-Defendant to such Suit. The impleadment of Defendant Nos. 2 and 3 was with an oblique motive to exert undue pressure on the Defendants to come to terms, urged Mr. Shaikh.

18. In opposition to this, Mr. Pankaj Pandey, the learned Counsel for the Respondents-Plaintiffs supported the impugned order. It was submitted that there are adequate averments in the Plea to make the Defendant Nos. 2 and 3 proper, if not necessary, parties to the Suit. Being the Managing Director and CEO and Whole-time Director of the Defendant No.1-company, the Defendant Nos. 2 and 3 cannot be permitted to wriggle out of the situation by relying upon the juristic character of Defendant No.1. Nor can it be said that the Defendant Nos. 2 and 3 were unaware of the unauthorised occupation of the Suit premises, even after the expiry of the term of the licences and that too without payment of the licence fee. The Defendant No.1-company

would not have unauthorisedly occupied the Suit premises without the approval of the Defendant Nos. 2 and 3, submitted Mr. Pandey.

19. In light of the aforesaid submissions, the core question that arises for consideration is, whether the impleadment of Defendant Nos. 2 and 3 as party-Defendants is justifiable. A useful reference, in this context, can be made to the relevant provisions contained in the Code.

20. Order I Rule 3 prescribes who may be joined as defendants. It reads as under :

“3. **Who may be joined as defendants.** — All persons may be joined in one suit as defendants where —

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

21. Order II Rule 3 which regulates the joinder of causes of action, reads as under :

“3. **Joinder of causes of action.** — (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

22. Order I Rule 10 (2) of the Code vests discretion in the Court to strike out or add parties. It reads as under:

“10(2) **Court may strike out or add parties.**— The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

23. Rule 13 of Order 1 mandates that all objections as to the non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity. It reads as under.

“13. **Objections as to non-joinder or mis-joinder.** — All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.”

24. A conjoint reading of the aforesaid provisions would indicate that, though the plaintiff is *dominus litis* and may implead the parties as defendants to the suit, against whom the plaintiff perceives to have

cause of action, the plaintiff does not have an unfettered choice. The primary question that comes to the fore is, whether a party already impleaded or sought to be added, is a necessary or proper party, to the suit. A person who has no semblance of right or interest in the subject matter of the suit, nor the decree passed in the suit has the effect of affecting his rights or liabilities, can be impleaded as a party defendant to the suit. The general rule of *dominus litis* is thus subject to the provisions of Order 1 Rule 10(2) of the Code, which provides for striking out or addition of the parties.

25. It is well recognized that, the deletion or addition of the parties to the suit is not a matter of initial jurisdiction, but that of judicial discretion. Such discretion is required to be exercised keeping in view all the circumstances. Under the provisions of sub-Rule 2 of Rule 10 of Order 1, the Court is empowered, at any stage of the suit, to add or delete a party. From the phraseology of sub-Rule (2) of Rule 10 of Order 1, it becomes evident that, the person who can be added as a party to the suit ought to be either (a) a person who ought to have been joined as Plaintiff or defendnat, but not impleaded or (b) any person whose presence before the Court may be necessary in order to effectively and completely adjudicate upon, and settle the questions involved in the suit.

26. In the case of '*Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Ors.*¹' the Supreme Court, expounded the distinction between a necessary party and a proper party in the following term:

“15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

27. The Supreme Court also expounded the nature of the jurisdiction exercised by the Court in the matter of addition or deletion of the parties under Order 1 Rule 10(2) as under:

“22. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds

1(2010) 7 SCC 417

that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

(emphasis supplied)

28. Thus, the essential test to add a person as a party defendant to the suit, is whether in the absence of such person no effective decree can be passed in the suit; meaning thereby a necessary party, or though no relief is claimed against a person, the presence of such person, would assist the Court in completely and effectually adjudicating the suit; meaning thereby a proper party. The concept of joinder of a party is inextricably interlinked with the joinder of causes of action. A party can be added to a proceeding, if there is any cause of action against such party as well.

29. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of **‘Iswar Bhai C. Patel alias Bachu Bhai Patel Vs. Harihar Behera and Anr.**² wherein the Supreme Court enunciated that the simple principle is that, a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined. The observations in para Nos. 11 to 14 read as under :

“11. Order 1 Rule 3 as provides as under :

(extracted above)

2 (1993) 3 SCC 457

12. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid multiplicity of suits.

13. This Rule, to some extent, also deals with the joinder of causes of action inasmuch as when the plaintiff frames his suit, he impleads persons as defendants against whom he claims to have a cause of action. Joinder of causes of action has been provided for in Order 2 Rule 3 which provides as under :-
(extracted above)

14. These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined.”

30. In view of the aforesaid exposition of law, whenever defendant seeks deletion of his name from the array of the defendants, the Court is required to pose unto itself the question as to whether the said defendant can be said to be either a necessary or proper party to the

suit. The said determination would, undoubtedly, hinge upon the averments in the plaint and the documents annexed with it. If there is slightest material to show the existence of a cause of action against such person, he cannot be deleted from the array of the defendants for the only reason, that, the plaintiff does not claim whole of relief against such person. However, the necessary nexus between the defendants and the lis ought to be, *prima facie*, evident.

31. The nature of the Suit also assumes material significance. In the case at hand the Plaintiffs seek to primarily recover the unpaid licence fee and damages for alleged unlawful occupation of the Suit premises and also for having allegedly caused damage thereto. The Suits are in relation to the recovery of licence fee. The Suits broadly fall in the category of Suits for recovery of possession and licence fee of the demised premises.

32. In the case of **Kanaklata Das and Ors Vs Naba Kumar Das & Ors**³ the Supreme Court, *inter alia*, enunciated that in an eviction Suit filed by the Plaintiff (landlord) against the Defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant. The Plaintiff being a *dominus litis* cannot be compelled to make any third person a party to the Suit, be that a Plaintiff or the Defendant, against

3 (2018) 2 SCC 352.

his wish unless such person is able to prove that he is a necessary party to the Suit and without his presence, the Suit cannot proceed and nor can it be decided effectively. In other words, no person can compel the Plaintiff to allow such person to become the co-Plaintiff or Defendant in the Suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the Suit and how without his presence, the Suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the Suit.

33. Applying the aforesaid principles to the facts of the case at hand, evidently, the Defendant Nos. 2 and 3 have been impleaded as party-Defendants for the reason that they were the Managing Director and CEO and Whole-time Director, respectively, of the Defendant No.1-company, with an assertion that they were in-charge of and responsible for day to day management of the affairs of the Defendant No.1-company. There is no assertion spelling out the particular role of Defendant Nos. 2 and 3 in the transactions in question. The submission on behalf of the Respondents-Plaintiffs that the Defendant No.2 has signed the Resolution passed by the Board of Directors in the capacity of the Managing Director of the Defendant No.1-company or that the Defendant No.3 has issued the letter of authorisation to execute the Leave and Licence Agreement on behalf of the Defendant No.1-company in the capacity of the CEO and whole-time Director of the Defendant

No.1-company and, therefore, they are necessary parties to the Suit, does not merit acceptance. The Defendant No.1-company being a corporate entity can sue and be sued in the said juristic character.

34. In the absence of any material to show that, in the absence of Defendant Nos. 2 and 3, the Suit cannot proceed and no effective decree can be passed, or how the presence of Defendant Nos. 2 and 3 is necessary for effective and complete adjudication of the Suit, the general allegations in the Plaint that the Defendant Nos. 2 and 3 were responsible for conduct of the business and day to day affairs of the Defendant No.1-company and were liable for the acts of the company, are insufficient to sustain the impleadment of Defendant Nos. 2 and 3 as party-Defendants to the Suits.

35. An inference sought to be drawn by the learned Judge from the provisions contained in Section 168 of the Companies Act, 2013 appeared to be inapposite. Section 168 deals with resignation from the office of Director of a Company. Sub-Section (2) of Section 168 provides that the resignation of a Director shall take effect from the date on which the notice is received by the Company or the date, if any, specified by the director in the notice, whichever is later. The proviso to sub-Section (2) of Section 168, which probably influenced the view of the learned Judge that the Defendant Nos. 2 and 3 cannot escape from their liability, provides that a Director shall be liable, even after his

resignation for the offences which occurred during his tenure. The proviso to sub-Section (2) of Section 168 could not have been resorted to, to hold that the Defendant Nos. 2 and 3 would be liable for the acts and omissions of the Defendant No.1-company giving rise to civil liability.

36. In the backdrop of nature of the Suits, the averments in the Plaint and the reliefs claimed therein, the Defendant Nos. 2 and 3, do not appear to be either necessary or proper parties to the Suits. If the submissions on behalf of the Respondents-Plaintiffs are readily acceded to and the Managing Director and CEO and Whole-time Director of the corporate entity are permitted to be impleaded sans any specific pleadings qua them, then there is an imminent risk that the Managing Director/CEO of the corporate entities would be dragged into a multitude of proceedings even though there is no cause of action qua such officers.

37. For the forgoing reasons, the Petitions deserve to be allowed.

38. Hence, the following order:

: O R D E R :

- (i) The Petitions stand allowed.
- (ii) The impugned orders stand quashed and set aside.

(iii) The Applications for the deletion of the Defendant Nos. 2 and 3 in the respective Suits, stand allowed.

(iv) The Defendant Nos. 2 and 3 stand deleted from the array of Defendants in L.C. Suit No. 4 of 2023 and L.C. Suit No. 6 of 2023.

(v) The Plaintiffs shall carry out the necessary and consequential amendment within a period of four weeks from the date of uploading of this order.

(vi) Rule is made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]