
(1983) 11 BOM CK 0044

In the Bombay High Court

Case No : Civil Revision Application No. 609 of 1983

Sushama Sharadchandra Budhisagar (Sou.)

APPELLANT

Vs

Pune Vidyarthi Graha and Others

RESPONDENT

Date of Decision : 15-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (1984) 2 BomCR 299

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar, for the Appellant; K.Y. Mandlik, for respondent No. 1, Kaiser and D. Shroff, A.G.P. for respondents Nos. 2 to 4, for the Respondent

Judgement

H.H. Kantharia, J.—By this Civil Revision Application, the petitioner Sou. Sushama Sharadchandra Budhisagar challenges an order dated 15th June, 1983, passed by the learned 4th Joint Civil Judge (Senior Division), Pune, below Exh. 26 in R.C.S. No. 1921 of 1981, rejecting her application to implead her as a necessary party in the said suit.

2. The short facts giving rise, to this Revision Application are that the petitioner was working as a full-time teacher in Maharashtra Vidyalaya at Pune, a School run by respondent No. 1 viz., Pune Vidyarthi Graha, Sadashiv Peth, Pune-411 030. She was retrenched on 27th July, 1979 from service on the alleged ground that the number of Divisions of Standard VIII and Standard X were reduced during the academic year 1979-80 on account of which her services were no longer required. This retrenchment order was said to have been made under Rule 77.4 of the Secondary Schools Code. The petitioner challenged the said order passed by respondent No. 1 before the Director of Education who upheld the objection of the petitioner and held that the retrenchment of the petitioner was illegal and directed respondent No. 1 to reinstate her forthwith with full back wages, with effect from 27th July, 1979. This order was communicated to respondent No. 1 and in pursuance thereof respondent No. 1 paid the arrears of

salary due to the petitioner upto the end of October 1981 but refused to reinstate her. Thus from November 1981, the petitioner was not paid her salary. She, therefore, contacted respondent No. 1 as also respondent No. 3 i.e. The Director of Education, Pune, and the concerned officers of respondent No. 4 i.e. The Education Officer, Zilla Parishad, Pune, with a request that her salary be paid to her. She wrote letters in that regard. One of her letters replied by the Director of Education, on 24th June 1982, saying that in view of an order passed in Civil Suit No. 1921 of 1981 by the learned trial Judge, the Government and the Education Department were unable to pay her salary. Thereafter the petitioner made inquiries in the Court of the learned trial Judge, Pune, and came to know that respondent No. 1 had filed a suit against respondent Nos. 2 to 4 for reliefs that the orders passed by the Director of Education directing reinstatement of the petitioner be declared null and void and that he permanently restrained from insisting upon the reinstatement of the petitioner. Further inquiries made by the petitioner revealed that in the said suit an application for interim relief was made by respondent No. 1 which was granted in terms of prayer Clauses (C) and (D) inasmuch as the defendants in the said suit (i.e. respondent Nos. 2 to 4) were restrained from compelling respondent No. 1 (plaintiff in the said suit) to reinstate the present petitioner and one Sou. S.S. Nimbhavikar and were also be directed to refrain from not paying the grants to the school as threatened by them.

3. Thereafter petitioner made an application in the Court of the learned trial Judge praying that since her interests were directly involved in the suit, she may be impleaded as one of the defendants in the said suit. After hearing the parties the learned trial Judge came to the conclusion that the petitioner is not required to be impleaded as one of the parties for the purpose of effective and final adjudication of the rights of the parties in the suit and that no injunction was granted directing respondent No. 1 to restrain from making payment to the petitioner. He accordingly rejected the petitioner's application by an order dated 15-6-1983 which is impugned herein in this Revision Application.

4. Mr. Jahagirdar, learned Advocate appearing on behalf of the petitioner took me through the plaint filed by respondent No. 1 in the trial Court and submitted from the averments made therein that respondent Nos. 3 and 4 had started paying salary to the petitioner and the amount of such salary paid to her was likely to be deducted from the grant payable to respondent No. 1 and, therefore, respondent No. 1 filed the suit mala fide and with ulterior motives. On behalf of respondents Nos. 3 and 4 it was submitted by Mrs. Shroff that it was on account of granting prayers in terms of Clauses (C) and (D) in the application for interim relief, as stated earlier, that the salary of the petitioner was stopped and even then respondent No. 1 was given grants, they are not prepared to pay the salary to the petitioner. Thus it is clear that on account of the orders made by the learned trial Judge on the application for interim reliefs, the petitioner has been put to a great loss and subjected to hardship as she cannot receive her salary because the Government is restrained from making payment of the said salary to her

directly and deducting the amount from the grant sanctioned to the school. Further the reinstatement of the petitioner on account of the order of the trial Court was also stalled as submitted by Mr. Jahagirdar and Mrs.. Shroff. Therefore, the interest of the petitioner were directly involved in the suit pending in the Court of the learned trial Judge and as such she is a necessary party therein. By rejecting her application great injustice has been done to the petitioner further urged Mr. Jahagirdar. Mrs. Shroff fully supported Mr. Jahangirdar. She also submitted that respondent No. 1 has been time and again called upon by respondent Nos. 3 and 4 to prepared a common seniority list of the teachers belonging to the petitioner not be required to be retrenched because in such common seniority list she would be senior vis-a-vis other teachers. Controverting these submissions MR. Mandlik, learned advocate appearing on behalf of respondent No. 1 urged that the petitioner had not preferred an appeal against the order of her retrenchment by respondent No. 1 and, therefore, the directions given by respondents Nos. 3 and 4 for reinstating her and asking respondent No. 1 to pay her salary are illegal. Mr. Mandlik further submitted that all that respondent No. 1 has challenged by filing the suit in the Court of the learned trial Judge is that the said orders passed by respondents nos. 3 and 4 be set aside and the directions given to respondent No. 1 by them be held to be illegal. Mr. Mandlik further urged that the dispute that is agitated can be adjudicated upon in the absence of the petitioner and as such the need not be impleaded as one of the parties.

5. Now, as per Order 1, Rule 10(2) of the Code of Civil Procedure, 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 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. (underlining supplied). A bare reading of these provisions of law shows that the Court will be perfectly within its powers to implead a party either as plaintiff or defendant if it is of the opinion that the presence of such party before it is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. In other words, a party who is interested in the disputed before the Court and with whose presence the dispute could be effectually and completely adjudicated upon can be impleaded either as plaintiff or defendant in a suit pending in a Court. This law has been well crystalised and Mr. Jahagirdar invited my attention to a number of decisions of various High Courts which we may usefully refer to. Thus in case of Bustar Transport and Trading Co. Jagdalpur and anr v. Court of Wards, Bustar and anr AIR 1955 Nag 78, it was held :---

"A Court has power to add the name of any person who ought to have been joined, whether as plaintiff or defendant, and whose presence before the Court

may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. This power can be exercised at any stage of the proceedings sou motu or on the application of any party."

The Madras High Court in case of C.M.V. Krishnamachari Vs. M.D. Dhanalakshmi Ammal and Others, , held as under :---

"In applying O. 1, R. 10(2) the only question is whether an applicant who applies for being impleaded as a party to the suit has got a direct interest in the subject matter in dispute which would be affected by the result of the litigation. "The interest" that is necessary to make a person party is legal interest including equitable interest that is an interest which the law would recognise and upheld. Surely it cannot be contended that law would refuse to recognise and up hold rights which would accrue under an executory agreement of sale."

Yet in another decision of the Madras High Court in case of P.R. Nallathambi Goundan Vs. Vijaya Raghavan and Others, , it was held :---

"Persons whose interests would be affected by the litigation are entitled to come on record to protect their interests when these are jeopardised by the persons already on record."

The Madhya Pradesh High Court in case of Sampatbai and Another Vs. Madhu Singh Gambhirji, , held :---

"Under order1, Rule 10(2) the test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising in the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject matter. The intervenor must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally-that is by curtailing his legal rights. Again in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant, the true test lies not so much in an analysis of what are the constituents of the applicants's rights but rather in what would be the result on the subject-matter of the action if those rights could be established."

Supporting Mr. Jahagirdar, Mrs. Shroff also invited my attention to a ruling of Karnataka High Court in case of Narayana Rao Swami Rao Kulkarni and Another Vs. Bheema Rao Swami Rao Kulkarni and Another, , where similar observations are made.

6. In the case before us to is very much clear that the orders passed by the

Director of Education that the petitioner should be reinstated and be paid back wages created a substantial right in favour of the petitioner that she was entitled to be reinstated with full back wages. This right has been sought to be taken away from her by respondent No. 1 by filing the civil suit in question. If this right of the petitioner is to be taken away without affording her a reasonable opportunity of being heard in the Court of the learned trial Judge, in my opinion, it would defeat the principles of natural justice and cause her irreparable loss. The petitioner is directly interested in the litigation because the result of the litigation, whichever way it goes, will directly affect her rights. Again, the dispute raised in the Court of the learned trial Judge is with regard to the preparation of a common seniority list amongst the teachers of the various schools run by respondent No. 1 and if such a list is prepared, the petitioner may not be required to be retrenched. What will be the correct seniority list would be within the knowledge of the petitioner and if she is impleaded as one of the parties, she will be able assist the trial Court in coming to a just and proper conclusion more effectually. In fact, respondents Nos. 2 to 4 may not be in a position to bring before the Court the correct seniority list because they might not be in the knowledge of the full facts. So long as respondent No. 1 is concerned, it is an interested party and one may legitimately entertain a fear that respondent No. 1 may not properly assist the trial Court in coming to a conclusion as to the correct seniority list. Therefore, the presence of the petitioner is very much necessary for the effectual and complete adjudication of the dispute pending in the trial Court. For all that we know, respondent No. 1 may have good case as has been urged by Mr. Mandlik but that does not mean that the petitioner is not entitled to assist the Court in coming to right, just and proper conclusions, especially when her interests are directly involved in the litigation. In my opinion, the fact, the petitioner is the only person who will be affected by the result of this litigation and, therefore, she is very much entitled to be heard in the trial Court. Under these circumstances, I am more than satisfied that the petitioner should be given a fair and reasonable opportunity of being heard in the Court of the learned trial Judge. Hence the impugned order passed by the learned trial Judge is bad in law and deserves to be set aside, but before I finally do that let us look into the case law brought to my notice by Mr. Mandlik on behalf of respondent No. 1.

7. Mr. Mandlik relied upon a decision of this Court in *Jivanlal Damodardas Wani Vs. Narayan Ukha Sali*, . It was held therein :

"Thus where an application by the defendant-tenant for addition of a party in a suit for eviction is opposed by the plaintiff and it has not been shown that the party sought to be added has any interest in the property, it was held that the Court in ordering the addition of that party had exercised its discretion unreasonably which entitled the High Court to interfere in revision with the exercise of that discretion."

(underlining supplied).

The ruling does not help Mr. Mandlik because it is only when it has not been

shown that the party sought to be added has its interest in the property that such a party should not be impleaded. The facts in the instant case differ. Thereafter Mr. Mandlik brought to my notice a decision of the Calcutta High Court in Narayan Chandra Garai and Others Vs. Matri Bhandar Pvt. Ltd. and Another, , where it was held :---

"A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgement. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party."

These are certainly not the facts of our case. In our case the interests of the petitioner are not incidental but direct. Thereafter reliance was placed by Mr. Mandlik on a decision of Gujarat High Court in Rasiklal Shankerlal Soni Vs. Natverlal Shankerlal Uipadhyava and Others, . In that case the question involved was for specific performance of the agreement of sale and the defendant's sisters who were not the parties to the agreement claimed right to the suit property and it was held that the defendant's sisters could not be allowed to be joined as parties to the suit as they could not be said to be necessary parties nor was their presence necessary to adjudicate upon all the questions involved in the case. I am afraid, this decision also does not help Mr. Mandlik because the facts in that case were with regard to the specific performance of the agreement for sale between the plaintiff and the defendant with regard to certain property and that on those facts the Gujarat High Court was of the opinion that the sisters of the defendant were not the necessary parties to be impleaded in the suit. The decision of the Gujarat High Court was based on peculiar facts of that case. Lastly, Mr. Mandlik referred to a judgment of Andhra Pradesh High Court, in a case of B. Somaiah and Others Vs. Amina Begum, , wherein it was held :---

"Where a person applied to be made a party to a suit, what the Court ought to see in whether there is anything in the suit which cannot be determined owing to his absence or whether there will be prejudice by his not being made as a party."

There is no dispute about the law laid down by the Andhra Pradesh High Court. Regard being had to the facts and circumstances of our case presence of the petitioner is very much necessary in the trial Court for the dispute to be adjudicated upon effectually and completely.

8. In this view of the matter the Civil Revision Application should succeed. Hence, the impound order passed by the learned trial Judge is set aside. The petitioner be added as defendant in the suit. Rule is made absolute. Respondent No. 1 to pay costs of the petitioner.