

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GONDIA.

CIVIL APPEAL NO.36/2023

Mohd. Tabrej s/o Yusuf Mansuri

.vs.

Shantabai wd/o Shalikram Dohare & Ors.

ORDER BELOW EXH.16

(Passed on 22.07.2025)

By the present application, the appellant prayed for addition of party namely Smt. Shakuntala w/o Rakesh Chauragade as respondent No.7, who is the original defendant No.7 in the Trial Court. It is contended that the judgment and decree dated 06.03.2023 passed in a Special Civil Suit No.69/2018 is challenged by the appellant. However, due to inadvertence, the name of proposed respondent No.7 remained to be added in the memo of appeal as respondent No.7 and only 6 respondents are added. The proposed respondent contested the suit in the Trial Court as defendant No.7. She has filed cross-objection before this Court in the appeal and therefore, prayed to allow the application to add respondent No.7 as party to the appeal.

2. The application is objected on behalf of respondents by filing say below the application, contending that the filing of appeal/issuing notice to the respondent No.7, stage is gone as per law of limitation, which is only 30 days. Hence, the application is strongly objected. It is contended that the respondent No.7 is the main party to the suit, she is directly involved in the result of the present appeal. Hence, it is contended to reject the application with cost.

3. Heard learned advocate for appellant Shri. S. R. Borkar and advocate Ku. K. D. Khatwani for respondents. Produced the application, filed along with the record.

4. In view of the submissions advanced, following points arise for my determination and my findings thereon are as under for the reasons stated thereafter :

POINTS

FINDINGS

1) Whether the application deserves to be allowed to add proposed respondent No.7 in the appeal?

In affirmative.

2) What order ?

As per final order.

REASONS

5. It is not disputed that, original Special Civil Suit No. 69/2018 was filed by the present appellant for specific performance of the agreement. In the said Special Civil Suit, the proposed respondent No.7 Smt. Shakuntala w/o Rakesh Chauragade is defendant No.7 and was contesting defendant before the Trial Court. It is further not disputed that, the respondent Nos.1 to 6 along with the proposed respondent No.7, who is original defendant No.7 preferred cross objection in the appeal. She has appeared in the matter and filed cross objection. Therefore, when she is already available in the proceedings and when the original suit is for specific performance of agreement, then the cause of action survive in favour of the appellant and cause of action to defend survives in favour of the present proposed respondent No.7 also.

6. In view of above, if defendant No.7 who is originally party in the Trial Court in the special civil suit, if not added as a respondent in the appeal, it would be a technical lacuna, though, she is present in appeal by way of cross objector, but not as respondent. This would further create a complication that a party though present, practically is not available on record by way of appeal, as respondent in the appeal filed by the original plaintiff. This cannot be allowed to continue. No doubt, there is a delay. The appeal against original defendant No.7 – proposed respondent, ought to have been preferred within 30 days from the date of the judgment and decree. However, rejection of the application would be creating multiplicity of proceedings and the cross objection also cannot be decided, unless there is appeal against the defendant No.7 proposed respondent No.7. If the proposed respondent No.7 appeared as cross objector in absence of any appeal against her cross objection would not be tenable on her behalf, in absence of appeal against her. Though, the cross objection is considered in itself as an appeal and all the provisions and procedure applicable to appeal are also applicable to a cross objection.

7. In view of above, if cost is imposed and the technical lacuna is allowed to be removed, then it will serve the purpose of justice, so that both the parties could be granted opportunity to deal with the matter on merits. However, cost is necessary to be imposed, which may not be so meager i.e. no cost at all considering situation, but it must also not be unnecessary burden for such an inadvertent act. In view of above, the

application deserves to be allowed by answering the points in affirmative. Hence, the order.

ORDER

1. Application is allowed, subject to payment of cost of Rs.2500/-.
2. The appellant to amend the appeal and produce amended appeal memo within a period of eight days from today by making payment of cost.

Dated : 22.07.2025

Sd/-
(R. N. Joshi)
Principal District Judge, Gondia.