


<b>MHRG170021522025</b> 	<b>COMMERCIAL SUIT NO.5/2025</b> <b>Maharashtra State Road Development through Shrimant Vishnu Patole</b> <b>Vs.</b> <b>Expressway Truck Terminus Pvt Ltd through its Director Shri Vijay Ratanchand Javeri</b> <b>And</b> <b>Pradnya Mangesh Bagde</b> <b>CNR NO. MHRG170021522025</b>
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**ORDER BELOW EXH. 14**

1. The applicant, being one of the directors of defendant has approached this court, under Order I Rule 10 of the Civil Procedure Code.
2. Learned advocate Mr. Ashwin Bhadang for the applicant would contend that the applicant is the director of the defendant Company and that learned NCLT in Company Petition No.217 of 2021 and the Hon'ble High Court in Arbitration Petition No12271 of 20121 has recognized the applicant as a director of the defendant and permitted the applicant to conduct and manage the affairs of the Company including operation of the bank accounts for smooth functioning of the company.

3. It is his further contention that M/s Jhaveri and Bele have jeopardized the interest of the Company and that due to their illegal, negligence and unlawful acts caused immense loss to the company.
4. Advocate Mr. Bhadang would further submit that there is no board resolution in favour of Mr. Jhaveri to represent the company in the present suit and as such he cannot be allowed to represent the company.
5. Advocate Mr. Bhadang would further submit that if the contents of the plaint are looked into in that case it would reveal that there is reference to the letter issued by the applicant and as such he would submit that the applicant is necessary party and in her absence the matter cannot be decided effectively. Thus, he has prayed to allow the application.
6. In support of the submissions reliance has been placed on following judgments;
  1. **Shubh Shanti Services Ltd. Vs Manjula S. Agarwalla (2005) 5 SCC 30.**
  2. **State Bank of Travancore Vs Kingston Computers India Private Limited (2011) SCC 524.**
7. Per contra, the learned counsel appearing for the plaintiff and defendant in chorus would contend that the application is preferred by misrepresenting the facts and that the plaintiff is master of the suit and the court cannot compel the plaintiff to

add third person as a party to the suit.

8. So far as the order passed by the learned NCLT is concerned, they would submit that it is an interim order and that the same has also been challenged before the NCLAT and that said fact has been suppressed by the applicant.
9. It has been further claimed by learned advocate Mr. Vig for the defendant that even if it is assumed that the applicant was the shareholder of the company, in that case also she does not have right to represent the company. Thus, it is prayed for rejection of the application.
10. In support of the submissions reliance has been placed upon the judgment in the case of **NAK ENGINEERING COMPANY PRIVATE LIMITED VS TARUN KESHRICHAND SHAH IN SLP No.6024-6025 OF 2022 DECIDED ON 05.01.2026.**
11. I have given my anxious consideration to the submissions made by the respective learned counsel for all the parties and have perused the material available on record. In furtherance whereof, the issue that falls for consideration is whether application filed by the applicant under Order I Rule 10 of the CPC seeking her addition require to be allowed or otherwise.
12. This court is required to consider the material aspect is as to whether the applicant is proper and necessary party to the lis and for that purpose it is apt to make reference to the

judgment of Hon'ble Supreme Court in the case of **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.**, MANU/SC/0427/2010, wherein the Hon'ble Supreme Court explained the import of the expressions "necessary party" and "proper party" as thus:

"14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party : (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely to adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

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 dispute 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."

13. From the aforesaid discussion, it is crystal clear that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.
14. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.
15. In light of the aforesaid submissions, the core question that arises for consideration is, whether the impleadment of the applicant as party Defendants is necessary.
16. It appears from the points urged by the applicant, that the applicant has mainly based her claim on the basis of the order passed by the Hon'ble High Court and the learned NCLT.
17. So far as the order passed by the learned NCLT is concerned,

admittedly it was an interim order and that the same has also been challenged by the defendant, before the Hon'ble NCLAT. Therefore, it cannot be said that the order passed by the learned NCLT has attained finality. In this view of the matter, even by stretch of imagination it cannot be said that the order passed by the learned NCLT has created right in favour of the applicant, warranting her addition as defendant in the present suit.

18. An attempt has been made by learned advocate for the applicant to submit that vide order passed by the learned NCLT the applicant has been recognized as director and as such it would amount that the defendant is not the director. In this regard, learned advocate Mr. Vig for the defendant has submitted that the learned NCLT is not the authority to decide as to who is the director of the defendant Company. In fact, while deciding present application, I am not required delve into the power of the learned NCLT. Therefore, the contention raised by learned advocate for the applicant does not require consideration, that too under the circumstances that the order passed by the learned NCLT has not attained finality.
19. It is to be noted that admittedly Mr. Jhaveri was the director of the Company and in the capacity of the director he has been added as a defendant to represent the defendant company. Even if it is accepted that vide order the learned

NCLT had authorized the applicant to conduct the business of the company, but that does not mean that Mr. Jhaveri has been debarred by the learned NCLT from representing the company. Therefore, the order passed by the learned NCLT would not take the claim of the applicant any further.

20. It is to be noted here that whenever a company or partnership firm is prosecuted, in that case it is for the plaintiff to prosecute it through the authorized representative i.e. either one of the directors or the partners. In this case already one of the directors has been added to represent the company. In this view of the matter, I do not find any merit in the contention raised by the applicant that she is necessary party, much less the proper party.
21. In addition to the above, looking to the nature of the suit and the fact that no relief is claimed by the plaintiff against the applicant, it does not appear that the applicant is necessary party to the suit.
22. So far as the contention of learned advocate Mr. Bhadang for the applicant that there is reference in the plaint regarding cause of action to file the suit, to the letter issued by the applicant is concerned, admittedly the letter was issued by the applicant in the capacity of the director of the company and not in an individual capacity and thus it would not create any right in favour of the applicant to claim her appearance before the court to contest the claim.

23. When this court has made a query with learned advocate for the applicant whether the applicant admits that Mr. Jhaveri is one of the directors, but the learned advocate would submit that the applicant does not admit so. In this regard I would like to state that certain procedure is laid down under the Company Law for introduction or removal of the director and that the same has to be done as per the law. However, nothing has been brought on record to show that at any point of time Mr. Jhaveri has been removed from the post of director. Thus, as on today, prima facie it can be said that the defendant company has been adequately represented before the court.
24. So far as the passing of the resolution in favour of Mr. Jhaveri to represent the Company is concerned, had it been the case that Mr. Jhaveri was added wrongly to represent the company, in that case the plaintiff would be the loser and by joining Mr. Jhaveri, at the most, it can be said that the plaintiff has carried the risk, but that would not give rise in favour of the applicant to claim hearing in this suit. Therefore, the authorities relied upon by the learned advocate for the applicant cannot be pressed into service.
25. Last but not the least, it is apposite to make reference to the judgment of the Hon'ble Supreme Court in the case **NAK Engineering Company Pvt. Ltd. (cited supra)** wherein the Hon'ble Supreme Court has held as under;

*“39. This apart, the Respondent Nos. 1 and 2 who have instituted the suit are dominus litis and it is for them to choose their adversaries. If they do not array the proper and necessary parties to the suit, they do it at their own risk. However, they cannot be compelled to add a party to defend a suit against their wishes. The decree, if any, passed in the suit would be binding only between the parties to the suit and would not infringe upon any right of a third party, much less of the Appellant that is not a party to the suit.*

*40. This conclusion is reinforced by the fundamental principle laid down in **Kanaklata Das v. Naba Kumar Das MANU/SC/0041/2018**, wherein this Court has observed:*

*11.4. ...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 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 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.*

*11.5. ... a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an*

*effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”*

26. As a sequitur to the law laid down by the Hon'ble Supreme Court since the plaintiff is the *dominus litis* and it is for it to choose the adversary. If it does not array the proper and necessary parties to the suit, it does it at its own risk. However, the plaintiff cannot be compelled to add a party to defend a suit against its wish. The decree, if any, passed in the suit would be binding only between the parties to the suit and would not infringe upon any right of a third party, much less of the applicant, who is not a party to the suit.
27. Looking to the entire gamut as well as by taking into consideration the facts and circumstances of the case, I have no hesitation to hold that the applicant is neither necessary nor proper party to the suit. A corollary to the afore stated deliberation is that, there is no merits in the present Application and it deserves to be rejected. Consequently, I proceed to pass following order;

**:: ORDER ::**

1. Application Exh.14 hereby rejected.
2. Costs shall be the cause.

Panvel,  
Dated :- 10/04/2026

(Dinesh E. Kothalikar)  
District Judge-2, Panvel-Raigad.