2026 INSC 8

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. OF 2026
(Arising out of SLP (C) Nos. 6024-6025 OF 2022)

NAK ENGINEERING COMPANY PVT. LTD. ...APPELLANT(S)

VERSUS

TARUN KESHRICHAND SHAH AND ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.

2. We have heard Shri Chander Uday Singh, senior counsel assisted by Shri Amarjit Singh Bedi, Advocate-on-Record for the appellant-NAK Engineering Company Pvt. Ltd.[1] and Dr. Abhinav Chandrachud, learned counsel assisted by Shri Surjendu Sankar Das, Advocate-on-Record for the respondent No.1- Tarun Keshrichand Shah[2].

[1] *Hereinafter referred to as 'appellant'*
[2] *Hereinafter referred to as 'respondent No.1'*

3. Respondent No.2- Priyalata Keshrichand Shah[3] is reported to be dead and her interest is represented by respondent No.1.

4. Respondent No.3- M/s Kishore Engineering Company[4] has not appeared. It had not even appeared in the Trial Court or the High Court. It has not even filed any written statement, despite service of notice.

5. In a Suit No.6117 of 2007 filed by respondent No.1 and respondent No.2 against respondent No.3, a Notice of Motion No.1346 of 2018 was moved to add the appellant as the party defendant to participate and contest the aforesaid suit. Earlier, a Notice of Motion No. 1925 of 2017 was also moved by the appellant seeking to set aside the order to proceed in the said suit *ex-parte*. Both the said motions were allowed by the court of first instance vide a common Order dated 05.10.2018. However, the said order was set aside by the High Court by the impugned judgment and

[3] *Hereinafter referred to as 'respondent No.2'*
[4] *Hereinafter referred to as 'respondent No.3'*

order dated 21.02.2022 in exercise of its power under Article 227 of the Constitution of India.

6. Under challenge in these appeals is thus the above judgment and order of the High Court dated 21.02.2022 setting aside the order of the court of first instance permitting impleadment of the appellant as one of the defendants to the suit meaning thereby that the motion of addition of the appellant as one of the defendants to the suit stands rejected.

7. One Keshrichand Shah was the original owner of the commercial premises admeasuring 1700 sq. feet existing on the third floor of the Churchgate House, Mumbai. He was the sole proprietor of M/s Union Commercial Corporation. The aforesaid Keshrichand Shah through its proprietorship firm M/s Union Commercial Corporation let out an area of 525 square feet of the above premises having five cabins to one M/s Modern Products Pvt. Ltd. The said M/s Modern Products Pvt. Ltd. licensed or sublet the same to the respondent no.3. In addition to the rent of Rs.400/- per month payable to M/s Modern Products Pvt. Ltd., the

respondent No.3 also used to pay service charges at the rate of Rs.2,100/- per month for the use of furniture and fixtures therein to the owner, Keshrichand Shah. On the death of Kesharichand Shah, the said service charges were realized by his heirs, i.e., respondent nos.1 and 2.

8. The respondent Nos.1 and 2 instituted a Suit No.3319 of 2007 on the original civil side of the Bombay High Court but on account of pecuniary jurisdiction it was later transferred to the Bombay City Civil Court and re-numbered as Suit No.6117 of 2017.

9. The aforesaid suit was instituted by respondent Nos.1 and 2 against respondent No.3 for the recovery of service charges at the rate of Rs.2,100/- per month, amounting to Rs.75,600/- for the period November 2004 to October 2007.

10. In the aforesaid suit, notice was served upon sole defendant i.e., respondent no.3 but no one appeared on its behalf and filed any written statement. Thus, after closing the evidence on 11.02.2014, the court *vide* order dated 12.11.2014 proceeded *ex-parte* in the matter.

11. It was much thereafter on 02.04.2018 that the appellant filed an application for being impleaded as the defendant in this suit contending that it is a successor of respondent No.3 under Part IX of the Companies Act, 1956. The appellant is actually running the business of respondent No.3. Therefore, it is a necessary party to the suit.

12. The appellant contended that it had acquired knowledge of the suit only on 02.10.2012 and that it has proceeded *ex-parte* against the respondent No.3. There was no proper service of the notice upon the respondent No.3 or upon the appellant. It was contended that the appellant has drawn separate proceedings for getting the *ex-parte* order set aside. The appellant had no knowledge of the transfer of the suit from the Bombay High Court to the City Civil Court as no notice in this regard was received or served upon it.

13. It may be not out of context to mention here that the respondent Nos.1 and 2 apart from instituting the above suit had also filed a suit for the eviction of the respondent No.3 and the appellant and its Directors from the premises in dispute in the Small Causes Court. This apart, a

criminal complaint was also lodged against the appellant and its Director–Himanshu Patwa on account of dishonour of two cheques of Rs.2,100/- and Rs.400/- issued by them in respect of the monthly service charges and the rent respectively in connection with the demised premises.

14. It is in the above background that the court of first instance *vide* order dated 05.10.2018 allowed the motion to add the appellant as one of the defendants to the suit observing that there is no dispute to the fact that the appellant is in occupation of the suit premises. The suit premises was initially let out to the respondent No.3 and is now in possession of appellant, who claims to be the successor company that has taken over the business of respondent No.3. The certificate of incorporation relied upon by the appellant along with the Memorandum of Association *prima facie* reveals that the appellant has taken over and acquired the business interest of the respondent No.3. The court accepted the said certificate issued by the Registrar of the companies opining that it lacked jurisdiction to rule on the validity of the said certificate.

15. The aforesaid order of the court of first instance on being taken up before the High Court under Article 227 of the Constitution has been reversed and the impleadment of the appellant has been revoked on the ground that it is not a proper or a necessary party to the suit. The suit will not fail for want of its presence.

16. The High Court proceeded to pass the impugned order on the premise that no relationship of tenant and landlord existed between the parties and that the appellant is the unauthorized occupant that need not be joined as a defendant to the suit.

17. The High Court further held that the issue of recovery of arrears of service charges can be decided even in the absence of the appellant as the respondent No.3 had no legal sanctity of law to authorize the use of furniture and fixtures to a third party.

18. It is alleged that the High Court completely ignored the fact that the appellant is the successor company of the tenant–respondent No.3 whose complete business has been taken over by it. The appellant has stepped into the shoes of

respondent No.3 and was in possession of the premises in that capacity and was not an unauthorized occupant.

19. It is in this background that we have been called upon to consider to decide whether the appellant is a necessary and proper party to be impleaded in the suit No.6117 of 2007 for the recovery of service charges in respect of the premises in dispute which was admittedly sublet to the respondent No.3 to whose business the appellant happens to be a successor.

20. The first and the foremost argument of Shri Chander Uday Singh, senior counsel appearing for the appellant is that the High Court exceeded its jurisdiction under Article 227 of the Constitution in setting aside the judgment and order of the court of first instance as if it is sitting in appeal. The order of the Trial Court allowing the impleadment was an interlocutory order which required no interference by the High Court in exercise of its supervisory power. The High Court incorrectly concluded that the appellant is not a necessary party to the suit, completely ignoring the fact that the respondent Nos.1 and 2 themselves had arrayed it

as one of the defendants in a suit for eviction from the premises filed before the Small Causes Court. The High Court also erred in not appreciating that the appellant is a successor to respondent No.3 under the Companies Act and that the validity of the certificate of registration issued by the Registrar of Companies in favour of the appellant could not have been adjudicated while exercising powers under Article 227 of the Constitution.

21. It is further contended that the appellant has been paying service charges through cheque since 1991 and the respondent nos.1 and 2 were aware of it. Rather, the service charges from 2004 were received by the respondent Nos.1 and 2, implying an admission on their part that the appellant is the person liable to pay the same. Even the furniture and telephone lines in the premises, which existed, have been used by the appellant since 1991 with the knowledge of the respondent No.1. Therefore, the High Court was not right in holding that since there is no relationship of tenant and landlord between the parties, the appellant is not a necessary party. The relationship of

tenant and landlord in the matter was not relevant and material, as it was not a suit for eviction rather a suit for recovery of service charges.

22. He further argued that, in fact, any decree that may be passed in the suit in question against the respondent No.3 that is practically defunct, would lead to execution of the decree against the appellant and as such the appellant is a necessary and proper party to the suit.

23. Dr. Abhinav Chandrachud, learned counsel appearing for the respondent No.1 in defense submits that the appellant has not come up before the court with clean hands rather with an ulterior motive to legitimize its illegal occupation over the premises in dispute. The summons in the suit were served upon the respondent No.3 way back in the year 2008. The acknowledgement bears the signature and the stamp of the appellant which clearly proves that the appellant was aware of the institution of the suit but even then, remained silent for over nine years before seeking impleadment. The appellant is an unauthorized occupant of the premises in dispute and therefore, in the suit for

eviction, was made one of the defendants so that the eviction decree if any may be effectively executed. However, this does not mean that it is also a necessary and proper party to the present suit for the recovery of arrears of service charges.

24. Further, the certificate of incorporation of the appellant is not a proof of successorship to the respondent No.3 and that the certificate annexed with the appeal is a new and different document which was not part of the record before the courts below. The respondent No.3 still continues to be a registered company and is still in existence and therefore, the appellant cannot be accepted to be its successor more particularly when it is only a firm and not even a company.

25. Lastly, it has been submitted that the respondent Nos.1 and 2 who instituted the suit are *dominus litis* in the matter and cannot be compelled to add a defendant against their wishes if they do not desire to seek any relief against such a person.

26. Undisputedly, the suit in question has been filed by the owners of the property to recover service charges for the

use of furniture and fixtures from the respondent No.3 that was inducted as a sub-tenant in the premises in dispute by M/s Modern Products Pvt. Ltd. The dispute is not regarding recovery of rent or arrears of rent. Therefore, the relationship of landlord and tenant between the parties is completely alien to the controversy in question.

27. The dispute is essentially with regard to payment of service charges between the owners of the property and its user i.e. respondent No.3. Therefore, no other person has any right to be impleaded so as to defend the suit regarding payment of service charges.

28. The appellant claims to be the successor of respondent No.3 and as such, wants to defend the suit on its behalf or as its representative.

29. The respondent No.3, though stated to be a private limited company, is only a partnership firm having only four members. There is no authentic proof on record that the above partnership firm was ever converted into a company. The conversion of a partnership firm into a company as under Part IX of Companies Act, 1956 requires fulfilment

of strict conditions such as having at least seven partners/members and execution of certain deeds. The respondent No.3 was having only four partners and as such was ineligible for conversion under the relevant law. Further, there is nothing on record to indicate that the aforesaid firm respondent No.3 has ceased to exist or has become extinct. The extract of respondent No.3 firm dated 20.09.2016 from the office of the Registrar of Firms reveals that respondent No.3 continues to exist as a partnership firm even though appellant may have been incorporated as a new company.

30. The appellant has relied upon the Certificate of Incorporation dated 22.02.1988 to claim that it has succeeded the respondent No.3. No doubt, a company comes into existence as a body corporate from the date of its incorporation having perpetual succession and a common seal. However, its incorporation or its Certificate of Incorporation in no way conclusively proves that it has come into existence as a successor of respondent No.3. In such circumstances, appellant cannot be accepted to be

the successor of respondent No.3 so as to permit it to be impleaded and to defend the suit for the recovery of service charges.

31. The appellant has nowhere established its independent right to be impleaded to defend the suit except for claiming to be the successor of respondent No.3 which, in our opinion, has no legs to stand.

32. The above discussion takes us to another aspect of the matter as to whether the appellant is a necessary or a proper party to be impleaded. The governing principles and law in this regard are well-settled.

33. The fundamental distinction between a "necessary party" and a "proper party" was succinctly explained in ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay***[5], wherein this Court held:

> *"6... 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*

[5] *(1992) 2 SCC 524*

presence is necessary for a complete and final decision on the question involved in the proceeding."

34. In ***Kasturi v. Iyyamperumal***[6], this Court crystallized the twin tests for a necessary party:

> *"...the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. ... two tests are to be satisfied for determining the question as to who is a necessary party. The tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."*

35. This principle has been consistently reiterated. In ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***[7], this Court reiterated:

> *"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*

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[6] *(2005) 6 SCC 733*
[7] *(2010) 7 SCC 417*

"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. 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."

36. Thereafter, in ***Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.***[8], the broad principles governing impleadment were summarized:

"41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff."

[8] *(2012) 8 SCC 384*

37. In the case at hand, the respondent Nos.1 and 2 are not claiming any relief against the appellant. There is no iota of material to indicate that the relief, as claimed in the suit against respondent No.3, if granted, would be implemented against the appellant. Therefore, the appellant is not a necessary party to the suit.

38. The appellant cannot also be construed as a proper party once it has failed to establish that it is a successor to the respondent No.3. In the absence of any evidence to prove that respondent No.3 has ceased to exist or cannot be represented in the suit on its own to contest it on merits, we are of the opinion that the appellant is not even a proper party to provide any assistance to the court in the suit.

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***[9], 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."*

[9] *(2018) 2 SCC 352*

41. In the above facts and circumstances, if the High Court, for one reason or the other, has set aside the order of impleadment passed by the court of first instance, we do not consider it to be illegal so as to set it aside and restore the order of the Trial Court.

42. There is one another reason for not interfering with the impugned judgment and order of the High Court. The summons issued in the suit meant to be served upon respondent No.3, were served in the year 2008. The seal and signatures on the acknowledgement on the said summons is of the appellant which clearly indicates that the appellant had acquired knowledge of the suit in the year 2008. However, the appellant kept silent and moved the motion for impleadment only after the evidence was closed in the year 2014 and the court had directed to proceed *ex-parte* in the matter. The impleadment application was filed almost after nine years of the knowledge of the pendency of the suit. Thus, the impleadment has been rightly refused to the appellant by the High Court.

43. We are conscious of the fact that the jurisdiction of the High Court under Article 227 is simply supervisory in nature and that the High Court ought not to have intervened in the matter. However, once the order has been interfered with, and rightly so, we do not wish to commit another illegality by restoring an incorrect order passed by the court of first instance.

44. In view of the above discussion, we are of the opinion that the appeals lack merit and are dismissed but with the direction that the decree passed in the suit would not be used against the appellant and would not be implemented against it.

45. The appeals are dismissed with no order as to cost.

46. Pending application(s), if any, shall stand disposed of.

.....J.
[PANKAJ MITHAL]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
JANUARY 5, 2026.