

Neutral Citation No. - 2023:AHC:219405

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8125 of 2023

Petitioner :- M/S Lord Krishna And Company

Respondent :- Ghaziabad Development Authority And 2 Others

Counsel for Petitioner :- Sunil Kumar Misra, Ayush Mishra

Counsel for Respondent :- Ravi Prakash Pandey, Pradeep Kumar Singh, Satendra Tirpathi, Tanisha Jahangir Monir

Hon'ble Jayant Banerji, J.

1. Heard Shri Ashok Kumar Upadhyaya (AOR No.A/A 1423/2012) holding brief of Shri S.K. Misra, learned counsel for the petitioner. Shri Satendra Tripathi, learned counsel appears for the respondent no.1, Ghaziabad Development Authority and Shri Kushagra Vaibhav Singh, holding brief of Shri P.K. Singh, learned counsel appears for the respondent no.2, Nagar Nigam Ghaziabad.

2. This petition has been filed seeking to set aside the impugned order dated 16.08.2022 passed by the Additional Civil Judge (Senior Division), First Ghaziabad in Original Suit No.348 of 2017 as well as the order dated 15.02.2023 passed by the Additional District & Sessions Judge, Court No.3, Ghaziabad in Civil Revision No.56 of 2022.

3. It appears that the petitioner filed a suit bearing Original Suit No.348 of 2017 impleading the Ghaziabad Development Authority and the Nagar Nigam Ghaziabad as defendants in the suit seeking a declaration that the order dated 21.03.2017 issued by the defendants for cancellation of the contract, which was communicated to the plaintiff-petitioner on 01.04.2017, be declared as void and ineffective. A further relief was sought for permanent injunction that pursuant to the contract dated 05.06.2017, the advertisements/hoardings that had

been set up by the plaintiff, be not destroyed or damaged. Written statements were filed by the defendant-Ghaziabad Development Authority as well as by the Nagar Nigam Ghaziabad. An application under Order I Rule 10(2) CPC was filed by the respondent no.3/proposed defendant, M/s Media 24 X 7 Advertising Pvt. Ltd., dated 25.05.2022 in which they sought impleadment in the suit as a necessary party. By the impugned order dated 16.08.2022 passed by the trial court, the application bearing paper no.84A-1 filed by the respondent no.3 under Order I Rule 10(2) CPC was allowed. The petitioner challenged the order of the trial court in Civil Revision No.56 of 2017 in the court of the District Judge, Ghaziabad, and by means of the impugned order dated 15.02.2023, the Additional District and Sessions Judge, Court No.3 rejected the revision. Hence this petition has been filed.

4. It is contended by the learned counsel for the petitioner that no finding has been returned by the trial court that the applicant-respondent no.3 was a necessary party in the suit meriting allowing the application Order I Rule 10(2) CPC. It is contended that given the second part of under Order I Rule 10(2) CPC, the court has to record a *prima facie* finding regarding the respondent no.3 being a proper party. It is stated that the order, therefore, is illegal and deserves to be set aside. Learned counsel in support of his contention has relied upon a judgment of the Supreme Court in the matter of **Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.**¹ and also a judgment of the High Court of Uttarakhand in the matter of **Swami Rupendra Prakash Disciple Swami Hansprakash vs. Vijay Kumar Malik and Ors.**².

5. Learned counsel for the respondent nos.1 and 2 have opposed this petition.

1 (2010) 7 SCC 417

2 2021 (151) RD 829.

6. A perusal of the plaint that is enclosed as Annexure-1 to this petition reveals that a contract was entered into between the plaintiff-petitioner and the defendant-respondent no.1, Ghaziabad Development Authority on 05.06.2007 for purpose of installing V-shaped boards on the roadside of the 'greenbelt' on the basis of B.O.T. and the work was required to commence from 05.06.2007 till 14.06.2022. It is stated in the plaint that by means of an order dated 21.03.2017 that was communicated on 01.04.2017, the aforementioned contract was cancelled by the defendants. In the aforesaid suit, an application under Order XXXIX Rule 1 and 2 read with Section 151 CPC was filed by the plaintiff-petitioner seeking an injunction restraining the defendant-authorities from demolishing or damaging the advertisements installed pursuant to the contract dated 05.06.2007.

7. Thereafter, an application dated 25.05.2022 under Order I Rule 10(2) CPC was filed by the respondent no.3 in which it was stated that by a contract dated 02.07.2021 executed between the applicant and the Nagar Nigam Ghaziabad within the limits of the area under the control of Nagar Nigam, for purpose of installation of Digital Media/Hoarding/Unipole/Kiosk for a period of fifteen years, the applicant had been assigned the contract work and the allotment was made on 30.03.2021. It is stated in the application that earlier the same work with regard to the advertisement was granted to the plaintiff by the defendant-respondent no.2, whereafter a suit was instituted by the plaintiff against the defendant nos.1 and 2 and in that suit an application 6-C2 (for temporary injunction) was filed by the plaintiff which was allowed restraining the defendants from interfering in the work of the plaintiff. It is stated that due to that order of temporary injunction, the work of the applicant-respondent no.3 is directly affected and he is incurring a daily loss of lacs of rupees. Accordingly, it was prayed that the applicant-respondent no.3 be made a party in the aforesaid suit.

8. The trial court, by its impugned order dated 16.08.2022, noted that direct effect of the temporary injunction order granted in favour of the plaintiff was being felt by the applicant-respondent no.3 and his interests are being affected and in case he is not made a party, all the issues involved in the suit cannot be effectively decided because of which the third party was very likely to file a separate suit which could lead the increase in litigation. Therefore, the application was allowed.

9. The revisional court, while allowing the revision by the impugned order dated 15.02.2023, affirmed the findings of the trial court and noted that the applicant-respondent no.3 was a necessary party and, therefore, his interests are vitally affected.

10. Learned counsel for the petitioner has not been able to demonstrate that the contract granted to the respondent no.3 on 02.07.2021 is materially different from the contract granted to the petitioner on 05.06.2007. The contract dated 05.06.2007 granted in favour of the plaintiff-petitioner has admittedly been cancelled and an interim injunction application filed by the petitioner has been allowed which vitally affects the interests of the respondent no.3.

11. Admittedly, the suit seeks a relief of declaration in addition to permanent injunction. The judgment cited by the learned counsel for the petitioner are of no assistance to the petitioner inasmuch as in the case of **Swami Rupendra Prakash** (supra), the suit was filed for injunction simplicitor and no other relief was sought. Further, the court in **Swami Rupendra Prakash** relied upon the judgment of the Supreme Court in the case of **Baluram vs. P. Chellathangam and Ors.**³ which, in turn, relied upon the another judgment of the Supreme Court in **Mumbai International Airport** (supra). In the judgment of the the Supreme Court in **Mumbai International Airport** (supra) with regard to the discretion granted to a court while considering an

3 (2015) 13 SCC 579

application under Order I Rule 10(2) CPC regarding striking out or adding parties, the law has been settled. The observations of the Supreme Court in **Mumbai International Airport** (supra) are as follows:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"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."

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 adjudicate upon and settle the question 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 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.”

12. As is evident from the perusal of the record of this petition, the courts have recorded categorical finding with regard to the respondent no.3 being a necessary party. The observations of the courts are sound and based on material on record.

13. The petition, therefore, calls for no interference and is, accordingly, **dismissed**.

Order Date :- 20.11.2023
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(Jayant Banerji, J.)