

A.No.1204 of 2014 in
CS.No.878 of 2010

C.V.KARTHIKEYAN, J

This application has been filed by the Plaintiff in the above said suit to strike off the issues (2) to (11) and to modify the issue (12) as "To what other reliefs, the Plaintiff is entitled to? which were framed on 11.11.2013.

2. In the affidavit filed in support of this application, it had been stated that the Applicant/Plaintiff had filed a suit for recovery of a sum of Rs.1,01,92,500/- that was lent to the Defendant during the year 2007. It had been stated that a loan of Rs.75 lakhs was given to the Defendant by four cheques of the Indian Overseas Bank, which had been acknowledged and since it was not repaid, the suit has been filed.

3. The Defendant had also filed a written statement and had not claimed a set off or a counter claim. He has also not paid any court fees with respect to the claims made by him in the written statement. However, while drafting the issues, this court had framed the following issues for trial on 11.11.2013:-

1. Whether the Defendant borrowed Rs.75,00,000/- from the Plaintiff by agreeing to return within six months and if not pay bank rate of interest?
2. Whether the Plaintiff and the Defendant along with few other partners in the D.J.Farms and Plantation, floated during the year 1994?
3. Whether the partnership business wound up in the year 2000-2001?
4. Whether the partnership business by name Charging Cross Agencies started during the year 1997 by Dr.Janarthana

Reddy, Dr.Prabhakar, Dr.M.V.Vijayakumar and Mr.C.Chandrasekhar along with the Defendant?

5. Whether the Plaintiff and the Defendant along with others entered into a development agreement dated 04.02.2008 with Phoenix Hodu Developers Pvt. Limited?
 6. Whether the Plaintiff and the Defendant along with other land owners entered into a commission agreement dated 7.6.2007?
 7. Whether 1% commission as per the clause under the agreement dated 7.6.2007 was agreed to be given by the Defendant, arrived at Rs.1,25,89,500/-?
 8. Whether the Plaintiff borrowed substantial sums from the Defendant by executing promissory notes which remained unpaid?
 9. Whether the Plaintiff borrowed heavy loans from the wife of the Defendant and issued cheques which also remained unpaid?
 10. Whether the agreement dated 7.6.2007 for commission is valid and binding on the Plaintiff towards payment of commission to the Defendant?
 11. Whether the Plaintiff along with other partners are due and payable a sum of Rs.1,25,89,500/- to the Defendant towards the commission?
 12. To what other reliefs, the parties are entitled to?
4. It has been stated by the Applicant that the issues (2) and (3)

relate to a partnership firm by name M/s.D.J.Farms and Plantation, issue (4) relates to a partnership firm by name M/s.Charging Cross Agencies and issue (5) relates to development agreement with a third party Company. Issue (6), (7), (10) and (11) relate to the alleged commission among several parties and sums payable to the Defendant. Issue (8) relates to an allegation that the Plaintiff owes money to the Defendant on execution of the promissory notes and

issue (9) relates to the loans borrowed by the Plaintiff from wife of the Defendant. It had been stated that these issues are outside the scope of the suit claim and consequently, they have to be struck off. It had also been stated that issue (12) has to be modified from "To what other reliefs, the parties are entitled to?" to "To what other reliefs, the Plaintiff is entitled to?"

5. In the counter filed by the Respondent/ Defendant, it has been stated that the issues, which are now sought to be struck off, are very much relevant to the case. Moreover, the Respondent had also filed a civil suit in Diary No.52144 of 2010 and since the same is pending, to avoid multiplicity of proceedings, the issues are necessary. It had been further stated that if both the suits are tried jointly, then the issues, now sought to be struck off, would be necessary issues in deciding the suit filed by the Respondent.

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. A perusal of the pleadings reveals that the Plaintiff has come before this court, on the basis of the receipt cum undertaking given by the Defendant dated 18.12.2007 for payment of a sum of Rs.99,37,500/- towards principal and interest and other reliefs. In the written statement, the Respondent had raised various contentions, but however, had not paid the court fees either to set off or for counter claim. Unless the Respondent/ Defendant pays necessary court fees, the issues raised in the written statement, which are not directly involved in the suit, cannot be agitated during the trial. Evidence has to be let in with respect to the pleadings and the

pleadings must conform to the stand of the respective parties. In the written statement, the Respondent had specifically denied borrowal from the Plaintiff. This would be a relevant issue for trial. The Respondent had further stated various other factors in the written statement, but the only aspect relating directly between the Plaintiff and the Defendant alone has to be taken into account and other issues, which are beyond the purview of the pleadings, cannot be agitated merely because they have been pleaded in the written statement. The Defendant would have a right to agitate such issues if he pays the court fees on the same by raising a counter claim. In this case, the Defendant had not raised any such counter claim. On the other hand, he has stated that a separate suit has been filed. Consequently, this court holds that the issues (1) to (12) as originally framed have to be recast and accordingly, the issues are reframed as under:-

1. Whether the Defendant is liable to pay the Plaintiff a sum of Rs.99,37,500/- (Rupees ninety nine lakhs thirty seven lakhs and five hundred only)?
2. Whether the Defendant is liable to pay interest at contracted bank rate being 12% per annum on the principal sum of Rs.75,00,000/- (Rupees seventy five lakhs only) from the date of the suit till the date of payment?
3. To what other reliefs, the parties are entitled to?
8. With the above reframed issues (1) to (3), this application is partly

allowed.

9. For filing affidavit of list of documents two weeks and for inspection and typed set of papers, two weeks thereafter. After such compliance, post the suit before the Additional Master III on 16.11.2016 for recording evidence. The

Plaintiff shall appear on the said date for recording evidence. There shall not be a gap of more than three working days between any two adjournments during recording evidence.

19.10.2016

Index:Yes/No
Web:Yes/No
Srcm

C.V.KARTHIKEYAN, J.

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Pre-Delivery Order in
A.No.1204 of 2014
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19.10.2016