

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1230 of 2015

and

M.P.No.1 of 2015

J.Sivakumar
Chairman
Navrang Shipping Pvt. Ltd.,
156/254, Thambu Chetty Street
Chennai - 600 001

... Petitioner

vs.

1.P.N.T.Chandru
Managing Director
Navrang Shipping Pvt. Ltd.,
156/254, Thambu Chetty Street
Chennai - 600 001

2.Navrang Shipping Pvt. Ltd.,
rep by its Managing Director
156/254, Thambu Chetty Street
Chennai - 600 001

3.India Trans, a partnership
firm, rep. by its Partner,
No.61, Old No.32
Kachaleeswarar Agraharam
Chennai - 1

4.Mrs.Vimala Chandru,
Personal Assistant
Indian Oil Corporation
Marketing Divn.,
Southern Region
139, Mahathma Gandhi Road
Nungambakkam High Road
Chennai - 600 034

5.Mayavaram Financial
108/1, G.N.Chetty Road
T.Nagar, Chennai - 17
Rep. by its Officer-Incharge/Manager

6. Reliance Consumer Finance
Haddows Road, Chennai -6
by its Manager/Executive Officer

7. HDFC Bank, ITC Towers
Opp. to TVS, Anna Salai
Chennai - 6
Rep. by its Manager.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the XVIII Additional Judge, City Civil Court, Chennai dated 09.01.2015 in I.A.No.141/2014 in O.S.No.1548 of 2011.

For Petitioner : Mr.R.Shanmugham
for R.Shanmugha Associates

For Respondents : Mr.V.R.Appaswamee for R1, 2 & 4
Mr.V.Vijayarajan for R3
M/s.Achari & Antoni Assts. for R5
Mr.V.Achuthanandan
for Pass Associates for R7

ORDER

The plaintiff in the original suit O.S.No.1548/2011 pending on the file of XVIII Additional Judge, City Civil Court, Chennai is the petitioner herein. As Chairman of the company by name Navrang Shipping Pvt. Ltd., the petitioner herein filed the above said suit originally on the file of this court (High Court) on its Original Side as C.S.No.1192/2008 for various types of injunctions against the first respondent herein/first defendant in respect of handling of the funds and management of the properties of Navrang Shipping Pvt. Ltd. Navrang Shipping Pvt. Ltd. itself has been shown as the second

defendant. One India Trans, a partnership firm figures as the third defendant. Though the suit came to be filed against respondents 1 to 3 ranking them as defendants 1 to 3 respectively, the reliefs were sought for against the first respondent/first defendant, which reveals the dispute between the petitioner/plaintiff and the first respondent/first defendant regarding the management of the affairs, funds and properties of the second respondent company and also against the 3rd respondent/3rd defendant. An averment has also been made as if the third respondent/third defendant is running the second respondent company as its benami. Since the matter relates to the management of the company affairs and the alleged mismanagement by the first respondent as Managing Director of the company, the petitioner/plaintiff has also filed a company petition in C.P.No.6/2011 before the Additional Bench, Company Law Board, Chennai and the same is pending.

2. The above said suit was subsequently transferred to the City Civil Court and re-numbered as O.S.No.1548/2011. The suit is in the part heard stage. At that point of time, the petitioner filed I.A.No.141/2014 to implead the respondents 4 to 7 as party defendants in the said suit on the basis of the contention that the fourth respondent, being the wife of the first respondent, has invested huge amounts with respondents 5 to 7 and that such investments were made only from the funds of the Navrang Shipping Pvt. Ltd. diverted by the first respondent.

3. The 4th respondent filed a counter not disputing the alleged investments made by her and on the other hand, contending that there is no connection between the relief sought for in the suit and the investments made by her with respondents 5 to 7. It is also her contention that her investments

had nothing to do with the funds. The respondents 5 to 7 also do not deny the alleged investment made by the 4th respondent. However all of them contended that they were neither necessary parties nor proper parties in the suit filed by the petitioner for injunction against the first respondent and the third respondent.

4. The learned trial Judge, after hearing both sides, came to a conclusion that the averments made in the supporting affidavit did not make the proposed parties, namely the respondents 4 to 7 herein either necessary parties or proper parties. The learned trial Judge also held that since no relief was sought for against the respondents 4 to 7, besides they being neither necessary parties nor proper parties, the prayer made for their impleadment could not be said to be bona fide and that hence the application for impleadment was liable to be dismissed. Accordingly, the learned trial Judge dismissed the said application by order dated 09.01.2015, which is impugned in the present revision.

5. The respondents have entered appearance through counsel. The arguments advanced on both sides are heard. The certified copy of the impugned order, copies of the other documents produced in the form of typed set of papers are also perused. Upon such persual this court does not find any defect or infirmity, much less illegality in the order passed by the trial court dismissing the application filed by the petitioner herein for impleading the respondents 4 to 7 as party defendants in the above said suit.

6. As rightly pointed out by the learned trial Judge in the impugned order, no relief has been sought for in the suit against any one of the

respondents 4 to 7 and the attempt to implead them as party defendants, without seeking any relief, will amount to an attempt to malign the 4th respondent. Considering the scope of the suit and the nature of the relief sought for by the petitioner in the present suit, neither the fourth respondent nor the respondents 5 to 7 shall be construed to be necessary parties. Nor can they be construed to be proper parties.

7. The only question that arises for consideration in the suit is "Whether the first respondent and the third respondent shall be restrained from handling the funds of the company 'Navrang Shipping Pvt. Ltd.,' to account for the withdrawals or to deposit the withdrawals from the company account into the court? Such a decision can be made in the absence of the respondents 4 to 7. The respondents 4 to 7 cannot have anything to say about the above said reliefs sought for against the defendants 1 and 3. Furthermore, in case the petitioner is of the view that the funds of the company were diverted and the fourth respondent is the beneficiary of such diversion, the same can be worked out in the Company petition pending before the Additional Bench, Company Law Board, Chennai or by way of a separate suit to be filed by the company and the same cannot be clubbed with the suit which has been filed by the Chairman of the Company against the activities of the Managing Director of the Company. If at all the funds of the second respondent company has been diverted by the first respondent and invested with any other person and the 4th respondent is a beneficiary of such diversion, the remedy open to the petitioner is to approach the Additional Bench, Company Law Board in the pending company petition or by way of a separate suit for necessary relief to lift the corporate veil and seek appropriate relief.

For all the reasons stated above, this court comes to the conclusion that there is no merit in the revision and the revision deserves to be dismissed. Accordingly, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

15.03.2016

Index : Yes
Internet : Yes
asr

To

The XVIII Additional Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.
asr/-

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and
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