IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM

THE HONOURABLE DR. JUSTICE. S.VIMALA

C.R.P. (NPD) No.1065 of 2016
and C.M.P.No.5904 of 2016

1. S.Vaikundarajan
2. S.Jagadeesan ... Revision Petitioners/ Decree Holders

Vs.

1. State by
   Superintendent of Police,
   Central Bureau of Investigation,
   Anti Corruption Branch,
   Chennai ... 1st respondent / Proposed Party
2. Janaki ... 2nd respondent/ Judgment Debtor

Civil Revision Petition filed under Section 115 of C.P.C. against the order, dated 23.02.2016, of the learned District Judge, District Court No.II, Kancheepuram in E.A.No.33 of 2015 in E.A.No.22 of 2014 in E.P.No.50 of 2012 in A.R.C.No.2 of 2012, allowing the E.A. filed by the 1st respondent / proposed party to implead as party respondent in E.P.No.50 of 2012.

For Petitioners : Mr.S.Meenakshi Sundaram

For R1 : Mr.P.Sidharthan
For R2 : Mr.C.Senthilkumar

O R D E R

The revision petitioners herein are the Decree holders, having obtained a decree in A.R.C.No.2 of 2012 dated 02.08.2012. The revision petitioners are executing the decree in E.P.No.50 of 2012 against the second respondent herein.

1.1. In the Execution Petition, the decree holders got an attachment (by the order dated 20.09.2013) of the amount lying to the credit of the second respondent. This attachment was made absolute on 10.10.2013. The Execution Petition was closed on 17.02.2014.

1.2. Based on the attachment, decree holders filed an application to send for the amount from the Bank in E.A.No.22 of 2014. That application was ordered on 15.04.2014.

1.3. Thereafter, two Execution Applications have been filed, one E.A.No.20 of 2015 by the Guarnishee Bank to condone the delay in filing the application under Order 21 Rule 106 C.P.C.

1.3.1. E.A.No.21 of 2015 was filed by the first respondent herein to cancel the attachment order, calling for the amount from the Bank.

1.4. In fact, the first respondent is the party, who was permitted to be impleaded by the order 23.02.2016, pursuant to the application filed by the first respondent in E.A.No.33 of 2015 (filed on 14.10.2015).

1.5. Two sets of facts are essential to understand the implication of the first respondent having been permitted to be impleaded as a party in the Execution Petition.

1.6. One set of facts leads to the Civil dispute between the Decree Holders and the second respondent herein.

1.6.1. Other set of facts relates to the investigation and enquiry being done by the first respondent herein with regard to disproportionate wealth alleged to have been amassed by the son of the second respondent herein, in which, the first respondent has entertained the suspicion that the civil transaction between the petitioners herein and the second respondent herein may have a bearing.

2. Facts in the civil dispute (between the revision petitioners and the second respondent) are detailed as under:

(i) The revision petitioners herein entered into an agreement dated 25.11.2008 to purchase the property of the second respondent herein. The agreement pertains to an extent of 20 acres 64 cents and 533 sq.ft. and the agreed sale price was Rs.8,25,00,000/-. As per the agreement, the sale has to be concluded on or before 31.11.2011. If there is a breach on the part of the owner of the property (R2 herein), the revision petitioners are entitled to refund of the amount along with interest at the rate of 8% p.a. It was agreed by the vendor(R2) that steps would be taken to convert the agricultural lands into a commercial lands and to take necessary steps to get the lands reclassified in Revenue records. As it was not done, the revision petitioners filed a petition in A.R.C.No.2 of 2012 and obtained an award. The second respondent was directed to pay a sum of Rs.8,25,00,000/- with interest @ 6% p.a. The total amount of Rs.8,91,00,880/-was ordered to be paid within two months from the date of receipt of copy of the award.

(ii) As the second respondent did not pay the amount, the revision petitioners filed E.P.No.50 of 2012 on 11.12.2012, seeking legal remedy against the second respondent. The Executing Court ordered attachment of SB A/c. No.606601508801 of ICICI Bank, Kancheepuram Branch, which was held in the joint names of Shri.A.Jayaraman, brother of Shri.A.Subbiah and Smt.Janaki (second respondent herein) vide order dated 20.09.2013, which was made absolute on 10.10.2013.

(iii) Based on that order, application was filed by the revision petitioners in E.A.No.22 of 2014 to send for the amount from the Bank which was allowed on 15.04.2013. Thereafter, E.P. was closed on 17.02.2014.

(iv) E.A.No.33 of 2015 was filed by the first respondent herein to implead CBI as a party respondent in the execution proceedings and it was allowed by the Court on 23.02.2016.

2.1. The above facts in nutshell with emphasis on dates and events are as described below:

Sl.No.	Dates	Events
1.	25.11.2008	Sale Agreement dated 25.11.2008 entered

		between petitioners and 2nd respondent.
2.	02.08.2012	Award passed on 02.08.2012 by Retired District Judge in A.R.C.No.2 of 2012.
3.	23.11.2012	Execution Petition filed by the petitioner/Decree Holder on 23.11.2012 before the Principal District Judge at Chengalpattu.
4.	11.12.2012	Execution Petition represented on 11.12.2012 before the District Judge No.II at Kancheepuram.
5.	24.12.2012	FIR No.RC MA1 2012 A 0055 dated 24.12.2012 pending investigation by the 1st respondent and the same is pending on the file of Hon'ble Court of Special Judge for the CBI Cases, Madurai.
6.	03.01.2013	Bank Account of the 2nd respondent/Judgment Debtor freezed by the order of the 1st respondent on 03.01.2013.
7.	20.09.2013	Attachment order made in E.P.No.50 of 2012 by District Judge No.II at Kancheepuram on 20.09.2013.
8.	10.10.2013	Attachment made absolute in E.P.No.50 of 2012 on 10.10.2013.
9.	17.02.2014	Execution Petition E.P.No.50 of 2012 closed on 17.02.2014
10.	20.03.2014	E.A.No.22 of 2014 filed by Decree Holder to sent for the amount of the Respondent/Judgment Debtor on 20.03.2014.
11.	15.04.2014	Sent for the Amount of the respondent/Judgment Debtor attached was ordered on 15.04.2014 in E.A.No.22 of 2014.
12.	22.07.2015	E.A.No.20 of 2015 filed by the Garnishee bank under Section 5 of the Limitation Act to condone the delay in filing petition under Order 21 Rule 106.
13.	22.07.2015	E.A.No.21 of 2015 filed by the 1st respondent "to cancel the attachment order passed in E.P.No.50 of 2012 and consequently to recall the sent for account"

14.	14.10.2015	E.A.No.33 of 2015 filed by the 1st respondent on 14.10.2015 to implead as party respondent.
15.	23.02.2016	Order (Fair and Decreetal order) passed in E.A.No.33 of 2015 by Hon'ble District Judge No.II at Kancheepuram.

The second set of facts leading to CBI being impleaded as a party in the civil proceedings

3. State represented by Superintendent of Police, CBI Branch, ACB, Chennai, (hereinafter referred as CBI) had been permitted to be impleaded by the order dated 23.02.2016, in E.A.No.33 of 2015 in E.A.No.22 of 2014 in E.P.No.50 of 2012 in A.R.C.No.2 of 2012.

3.1. The CBI registered a case in R.C.MA1 2012 A 0055 against Shri.A.Subbiah, IAS, Secretary, Department of IT, West Bengal, former Chairman, V.O.C. Port Trust, Tuticorin and six others, i.e.Smt.L.S.Rathika (his wife), A.Jayaraman (his brother), Smt.R.Ganga (brother's wife), Smt.A.Janaki, 2nd respondent herein (his mother) and S.Vaikundarajan, 1st petitioner herin and S.Jagadeesan, 2nd petitioner herein under Section 120 B IPC read with 13 (2) read with 13 (1) (e) of the P.C.Act, 1988.

3.2. The allegation is that during the period between

30.04.2007 to 30.04.2012, Shri.A.Subbiah, (referred supra) amassed assets and pecuniary resources to the tune of Rs.8,23,93,501/- in his name and in the names of his family members namely A2 to A5, which are disproportionate to his known and lawful source of income, for which, he did not satisfactorily accounted for.

3.3. This case is an off-shoot of the case registered by CBI, ACB, Chennai, R.C. 34(a)/2011 in which, Shri.A.Subbiah was examined and his house was searched in July 2012. During the investigation of this case, the SB Account which stood in the names of Shri.A.Jayaraman, brother of Shri.Subbiah and Smt.Janaki was frozen on 15.06.2012 vide an order under Section 102 Cr.P.C. and the same was intimated to the Special Judge for CBI Cases, Madurai.

3.4. During the course of investigation of this case, i.e. in R.C.55(A)/2012, again the account was frozen on 04.01.2013 vide an order under Section 102 Cr.P.C. and the same was intimated to the Court.

3.5. It is the case of CBI that Shri.A.Subbiah, while serving as Chairman of VOC Port Trust, Tuticorin, had entered into a criminal conspiracy (with a view to amass wealth) with P1, P2 and R2.

4. It is evident from the orders passed in the Bail application that the earlier case registered in R.C.No.34 of 2011 has been closed on 06.07.2013. It is also stated that the earlier case was the basis for registering the subsequent case.

5. With the factual matrix, the legal issue to be considered is whether the order of the Executing Court, permitting the impleadment of CBI is justified.

6. It is an admitted case of all the parties that the revision petitioners are not the relatives / family members of Shri.A.Subbiah, IAS. It is not the case of CBI that the revision petitioners abated the offence alleged against the said IAS officer, during the relevant time.

7. It is not the case of the CBI that the properties standing in the name of the second respondent Smt.Janaki were purchased in the name of R2 with the ill-gotten money of the said IAS Officer. The period under scrutiny was 2007 to 2012, whereas the property had been purchased long prior to that. Therefore, there is no cloud in the title of R2.

8. Admittedly, the sale consideration by the revision petitioners had been paid during the year 2010-2011 i.e.between 13.08.2010 and 28.11.2011, i.e. long prior to the registration of the First Information Report in R.C.No.55 of 2012, i.e. Prior to 24.12.2012.

9. It is not the case of CBI that the second respondent herein parted with more money than is required and instead, the allegation is that the revision petitioners herein paid more money than what is required to be paid for the sale transaction. In any event, the fact remains that the sale transaction is not completed and the revision petitioners wanted only the return of the sale consideration paid.

10. Admittedly, the property had been purchased by the second respondent during the year between 2002 to 2004. The check period is between 2007 to 2012. Therefore, the property could not have been purchased from out of the tainted money. Even assuming that the property could have been purchased from out of the tainted money, then, the action to be taken is against the sale of property and not against retrieval of the property.

11. The allegation of CBI that a worthless property had been

purchased for a whooping price, is not supported by any basic materials. For the check period, there is no specific allegation connecting the petitioners with the second respondent or his family members.

12. The fact remains that major part of amount has been paid by the revision petitioners by cheque and only a small portion of the amount has been paid by way of cash.

13. It is the case of CBI that the money standing in the Bank Account of the second respondent is the subject matter of an offence and the revision petitioners should not be allowed to enjoy the fruits of the crime. This contention also cannot be accepted as the revision petitioners are not asking for any money from the pocket of the second respondent and what is asked for is the return of their own money paid by them earlier.

14. At this juncture, it is relevant to point out the legal objection taken by CBI freezing the account of the second respondent.

15. The learned counsel for the revision petitioners contended that the mandatory procedure, as contemplated under Section 102

Cr.P.C. while freezing the bank account, has not been followed and therefore, the order dated 15.06.2012 and 04.01.2013, freezing the account of the second respondent are illegal and relied upon the following decisions.

(i) 2003 Crl.L.J.294 (R.Chandrasekar vs. Inspector of Police, Salem and another)

> 11. The respondents/police has also not followed the mandatory requirements of Section 102 of Cr.P.C. The police officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate the bank account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner."

(ii) 2003 Crl.L.J. 2779 (B.Ranganathan v. State and others)

> "21. Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of bank account. In case of seizure of a bank account, the police officer should do two things: he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when

required or to hold them subject to such orders as the court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in Ms.Swaran Sabharwal v. Commissioner of Police reported in 1988 Crl.L.J.241 (Delhi) (extracted supra).

This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

(iii) 2008 (3) CTC 657 (Padmini vs. Inspector of Police, District Crime Branch, Tirunelveli and others)

"6. In the former judgment, a learned Judge of this Court in paragraph 11 has held as follows:

"The respondents/Police has also not followed the mandatory requirements of Section 102 of the Code of Criminal Procedure. The Police Officer shall forthwith report the same to the Magistrate and also give notice to the petitioner and allow him to operate the Bank Account subject to executing a bond undertaking to produce the amount in Court, as and when required as contemplated in Clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner."

Thus, it is clear that the order freezing the account of R2 is not valid.

Under normal circumstances, the order freezing the account could be questioned only by R2. But, the revision petitioners, having acquired interest in the deposited amount, have the right to challenge the freezing order.

16. Even assuming that, ill-gotten money was utilized in the purchase of property, even then, the CBI may have the right in asking for retention of the property and they cannot be interested in retention of property by R2 by returning the advance amount/sale consideration to the revision petitioners.

17. At this stage, the justification for a) impleadment as such; b) impleadment at the stage of EP (of CBI) has to be considered.

17.1. In order to appreciate the order of impleadment, the scope of Order 1 Rule 10 CPC has to be considered.

17.2. Order 1 Rule 10 Civil Procedure Code dealing with impleadment of parties reads as under:

> **10. Suit in name of wrong plaintiff.-** (1) Where a suit has been instituted in the name of the wrong person as

plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act,

> 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

18. The Executing Court has allowed the impleadment on the ground that it would not cause any prejudice to the Decree holders. There is a further finding that, the impleadment would be helpful to find out, whether the amount lying in the Bank Account, in the name of the Judgment Debtor/R2, has got any connection with the criminal case.

19. In the decision reported in ***(2010) 7 SCC 417*** (***Mumbai International Airport (P) Ltd., v. Regency Convention Centre and Hotels (P) Ltd.)*** the Hon'ble Apex Court considered the scope of Order 1 Rule 10(2) Code of Civil Procedure and observed:

> The general rule in regard to impleadment of parties is that the Plaintiff in a suit, being dominus litus, 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 1 Rule 10(2) of the 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.

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 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.

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. The fact that a person is likely to secure aright/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.

20. Striking out or adding parties under Order 1 Rule 10 (2) CPC, can be done at the judicial discretion of the Court at any stage of the proceedings, and this discretion can be used, either suo motu or on the application of the parties or even of a non-party. This can be done subject to such terms as the court deems fit to impose.

20.1. Strictly construing, the scope of impleadment is very very limited in this case.

20.2. Under such circumstances, the Court should have considered the interest of both parties, while an application was filed to implead CBI at the stage of final disposal of the Execution Petition.

21. The party, who obtained a decree, on 02.08.2012, cannot be deprived of the fruits of the decree till in the year 2016. But, at the same time, when the CBI claims that there is a possibility of the money lying in Bank Deposit being a tainted money (which of course does not appear to be correct) in consideration of larger public interest and there being no personal interest, the Court should have protected the interest of CBI, not by allowing them to be impleaded, but by imposing appropriate conditions to secure the money at the later point of time (if need be).

22. At this juncture, it is submitted by the learned counsel for the revision petitioners that the revision petitioners are ready to submit a Bank Guarantee and thus, the interest of CBI can be better protected. It is relevant to extract the memo filed by the petitioner, which reads thus:-

> "The revisions petitioners are hereby prepared to offer Bank Guarantee for the sum of Rs.6,03,000/-

(Rupees Six Crores and Three Lakhs only), which is the amount available in ICICI Bank at Kancheepuram in S.B.A/c. Standing in the name of Janaki (2nd respondent in this Civil Revision Petition). The petitioners further submits they are prepared to offer the bank guarantee; immediately within 30 days from the date of the passing of the order of this Hon'ble Court. The amount lying the garnishee bank may be ordered to be send for to the executing Court and the said funds may be order to the released to the petitioners after furnishing the bank guarantee."

23. In the light of the facts and circumstances of the case and in terms of memo filed, this Civil Revision Petition is disposed of, with the following directions:-

(i) The petitioner shall furnish Bank Guarantee for a sum of Rs.6,03,00,000/-, which is available in ICICI Bank, Kancheepuram, in Savings Bank A/c. No.606601508801 standing in the name of the second respondent. Such guarantee shall be furnished within a period of two weeks from the date of receipt of a copy of this order.

(ii) On such guarantee being furnished, the amount lying in Garnishee Bank is ordered to be sent for to the Executing Court and the said funds are ordered to be disbursed to the Revision Petitioners herein.

The benefit of the order of impleadment passed by the lower Court is available to the CBI, only to the extent of availing the conditions imposed on the Revision Petitioners, i.e. Execution of Bank Guarantee as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2016

ogy/srk

To

1. The Superintendent of Police,
   Central Bureau of Investigation,
   Anti Corruption Branch,
   Chennai.

2. Learned District Judge,
   District Court No.II,
   Kancheepuram.

S.VIMALA, J.

ogy/srk

C.R.P. (NPD) No.1065 of 2016

28.04.2016