

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5353 OF 2015

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COMMON ORDER :

Heard the learned counsel appearing for the petitioner. In spite of service of notice, there is no representation on behalf of the respondents.

Civil Revision Petition No.5353 of 2015 was filed under Section 227 of the Constitution of India, questioning the order passed in I.A. No.847 of 2014 in O.S. No.154 of 2012 on the file of the 1st Additional District Judge at Karimnagar, wherein an application filed by the plaintiff under Order I Rule 10 of Code of Civil Procedure to implead the proposed defendants as defendants 2 and 3 in the said suit, was rejected.

Similarly, Civil Revision Petition No.5356 of 2015 was filed questioning the order in I.A. No.846 of 2014 in O.S. No.154 of 2012 on the file of the 1st Additional District Judge at Karimnagar, wherein an application filed under Order I Rule 10 of Code of Civil Procedure to implead the proposed plaintiff as plaintiff

No.2 in the said suit, was rejected.

Aggrieved by the said orders, the present two C.R.Ps., are filed. Since the issue involved in both the matters are interconnected, the same are being disposed of by this common order.

The plaintiff, who is the petitioner herein filed O.S. No.154 of 2012 on the file of the 1st Additional District Judge at Karimnagar for recovery of an amount of Rs.1,01,26,000/- from the defendant, due as on 31.07.2012, with further interest at 24% p.a. from the date of suit till realization of the entire loan amount. The averments in the plaint show that the defendant being a close relative and associate of the plaintiff and her husband (proposed plaintiff) approached them along with his wife Smt. Thummala Aravinda (proposed defendant No.2) and discussed their financial problems. The defendant is said to have disclosed to them about availment of loan amount in State Bank of Hyderabad, Huzurabad branch for the development of M/s. Raasi Seeds Private Limited, Huzurabad, but could not repay the same. The averments in the plaint disclose that he has entered into a compromise proposal with State Bank of Hyderabad, Huzurabad agreeing to pay a sum of Rs.1,63,00,000/- in discharge

of loan amount availed from the State Bank of Hyderabad, Huzurabad for the purpose of development of his seeds business under the name and style of M/s. Raasi Seeds Private Limited and the bank has accepted the compromise proposal of the defendant and the defendant also represented the fact to the plaintiff that said compromise proposal was also recorded in O.A. No.108 of 2004 on the file of the Debt Recovery Tribunal, Hyderabad. The averments in the plaint further shows that the defendant represented to the plaintiff that as per the said compromise proposal he has deposited Rs.1,24,00,000/- lakhs out of Rs. 1,63,00,000/- lakhs to the credit of his loan account and the remaining balance amount of Rs.39 lakhs could not be repaid due to conditions which were beyond his control and as such requested the plaintiff and her husband to provide the loan amount to discharge his liability. The averments in the plaint show that the plaintiff and her husband with the help of their son-in-law arranged Rs.61,00,000/- to the defendant from time to time. When the plaintiff requested the defendant to repay the amount, the defendant neglected to repay the principal and interest and as such the present suit has been filed seeking recovery of the amount on the basis demand promissory notes executed in their favour.

Pending the suit, the plaintiff herein filed I.A. No.846 of 2014 to implead her husband as plaintiff No.2 for better adjudication of the suit since most of the transactions in between the defendant and the bank were entered into by her husband till the clearance of loan transaction. It is said that unless and until her husband is impleaded as a party to the proceedings, the material facts relating to the transaction of the suit may not be adjudicated properly. Similarly, she also filed I.A. No.847 of 2014 to implead Smt. T.Aravinda who is the Managing Director of M/s. Rassi Seeds Private Limited as D-2 and the Company as D-3 as their impleadment is necessary for proper adjudication since the entire loan was availed in the name of M/s. Raasi Seeds Private Limited. It is further stated that no prejudice would be caused to the respondent/defendant if her husband is impleaded as a party. A counter came to be filed opposing the same. After considering the rival arguments, the 1st Additional District Judge, Karimnagar, dismissed both the petitions, stating that unless and until there is a cause of action and relief claimed by or against the party who is proposed to be added as a party in the suit, he cannot be added as a party to the suit. He further stated that if really the proposed plaintiff has knowledge about the suit

transaction he can be examined as a witness on behalf of the plaintiff. Challenging the same, both the Civil Revision Petitions came to be filed.

The learned counsel for the petitioner mainly submits that in view of the contents in the written statement the petitioner herein filed the present I.A. since the said facts were not to the knowledge of the petitioner at the time of filing of the suit.

As seen from the record, the suit came to be filed on 22.08.2012 and the written statement was filed on 29.01.2013. In the said statement it was stated that the plaintiff was not aware about the transaction as the original person prosecuting the issue was her husband and not the plaintiff. The averments in para 5 of the written statement state that as per the documents dated 02.04.2009 and 17.09.2011 the undertaking of repayment of the balance of amount on behalf of M/s. Rasi Seeds Pvt. Ltd., was given by the husband of the plaintiff addressing the same to the Managing Director and Manager of the State Bank of Hyderabad. Since the letters were written by the husband of the plaintiff, it is stated that the plaintiff i.e., the petitioner herein is not competent to file the suit. It is further stated that even if the said fact is presumed to be true, the suit ought to

have filed by the husband of the plaintiff against M/s. Rasi Seeds Private Limited but not against the defendant No.1 in his individual capacity. In view of the above, the applications are filed seeking impleadment of husband of the petitioner as Plaintiff No.2 and that of wife of defendant No.1 as D-2 and company as D-3.

Before proceeding further it is to be noted that inspite of service of notice there is no representation on behalf of the respondents.

Order I Rule 10 of C.P.C., states that 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 bonafide 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. Similarly Order I Rule 10(2) of C.P.C., states that 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.

In **Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.**,^[1] the Apex Court considered the scope of Order 1 Rule 10(2) CPC and observed as under :

“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 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 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.

Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.” (emphasis supplied)

I n Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay^[2], the Apex Court interpreted the aforesaid provision and held

as under:

"Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. 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. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case." (emphasis supplied)

Similarly while dealing with Order I Rule 10 (2) C.P.C., the Apex Court in **Anil Kumar Singh v. Shivnath Mishra**^[3], held as under:

"By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party- defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."

From the above, it is clear that the Court has got power to add any person connected with the subject

in dispute as a plaintiff or as a defendant provided the court is satisfied that it was a bonafide mistake and that it was necessary for determination of a real matter in dispute. As seen from the record, the averments in the written statement filed by the defendant refer to the maintainability of the plaint at the instance of the petitioner since the husband of the petitioner is said to have written letters dated 02.04.2009 and 17.09.2011 to the Bank undertaking to repay the balance of the amount on behalf of M/s.Raasi Seeds Private Limited. Hence, this Court is of the view that the proposed plaintiff and defendants are necessary parties to the dispute. Since the trial has not yet commenced and as the case is still at its initial stage, this Court is of the view that for an effective adjudication of dispute, it would be appropriate to add the proposed parties as necessary parties to the said suit.

Accordingly, both the Civil Revision Petitions are allowed and orders passed in I.A. No.846 of 2014 in O.S. No.154 of 2012 and I.A. No.847 of 2014 in O.S. No.154 of 2012 on the file of the 1st Additional District Judge at Karimnagar are set-aside. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in both the Civil Revision

Petitions shall stand closed.

C.PRAVEEN KUMAR,J

Dt: 03.02.2016

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[\[1\]](#) (2010(7) SCC 417)

[\[2\]](#) (1992) 2 SCC 524

[\[3\]](#) (1995) 3 SCC 147