

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.6310 AND 6365 OF 2012

COMMON ORDER:

These are the two revision petitions filed by the unsuccessful petitioner, who proposed to come on record as co-plaintiff in the respective two suits i.e., O.S. No.2 of 2007 and O.S. No.7 of 2007 by maintaining under Order I Rule 10 C.P.C in I.A Nos.312 and 313 of 2012 respectively by impugning the dismissal of the petitions, after contest vide separate orders dated 19.07.2012 passed by the learned II Additional District Judge, Jagtial, Karimnagar District.

2) Heard learned counsel for revision petitioner/ third party to the suits supra and also the counsel for the 1st respondent/ plaintiff in two suits and also perused the counter filed by respondents 2 to 4 authorities representing the State, who are defendants 1 to 3 in the two suits respectively, and perused the material on record.

3) Now the points that arise for consideration, from the elaborate submissions, needless to reproduce, are

1) *Whether the revision petitioner is either necessary or proper party to the lis covered by two suits and if so, the dismissal of the applications by the lower Court impugned in the two revisions requires interference holding as unsustainable or otherwise"*

2) *To what result?*

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Point No.1:

4) The contention of the petitioner in the respective affidavits vis-à-vis submission before the lower Court covered by the impugned separate orders of the lower Court in the two petitions supra, is that there is an agreement by the plaintiff of the two suits with the

defendants 1 to 3 i.e., limbs of the Government regarding the contract works entrusted to the plaintiff in the two suits and there is a reference in the agreement regarding the sub-contract works and payment directly by the Government to the sub-contractors and the affidavit petitions do not refer to clause (4) but only clause (12) of the said agreement.

5) In fact, clause (4) which is the core from the agreement terms not in dispute by all the parties to the lis covered by the revision reads as under:

- a) The first party/ plaintiff (emphasis mine) agreed to give authorisation to the Government of Andhra Pradesh to pay the bills directly to the second party (proposed parties sought for impleadment) (emphasis mine) for the work done by the second party. The Government of Andhra Pradesh shall pay Bills to the second party as and when they are due from the department, for the work executed by the Second Party, after deducting royalty payable to first party by the second party and after making all statutory deductions.
- b) The first party shall not revoke the authorisation given to the Government of Andhra Pradesh to make payment for the work done by the second party directly to the second party.
- c) The Government of Andhra Pradesh shall give credit to the amount of second party in regard to payment of Income Tax, Works Contract Tax, seignorage charges, collected out of bills payable to the second party for the work executed. Income Tax may be deducted at 1.12% from the Bills of second party.

6) The contention of the petitioner in seeking to be impleaded for coming on record in the suit though allegedly as if co-plaintiff, instead as defendant No.4 is that, out of the suit claim made by the plaintiff for contract works of the defendants (limbs of the Government), major part of contract works done by him and other third parties to whom pursuant to the agreement, amounts directly payable by the Government. The contention of the State as defendants 1 to 3 in the suit in opposing the suit claim and any entitlement by plaintiff against them, as can be seen from the

pleadings before the Court available on record, is also by saying for the works done by the second party to the agreement (proposed parties) and the amounts are paid or to be payable, if any, to the second party to the agreement and thereby, the suit claim is not tenable.

7) A perusal of the third party proceedings as per A.P.State Amendment as in Madras State amendment clearly speaks, where defendant claims that the suit claimed amount is liable to be adjusted or set off or not liable by virtue of intervening of third party, the remedy of such defendant is to summon the third party as a witness to depose and if failed to attend, to implead as co-defendant to the suit for claiming adjustment. In the suit, it is stated across the bar that trial is almost completed even by the time of the petitions to implead filed in the year 2012 and the matter reached the stage of arguments.

8) It is clear from the above that the defendants did not take such a recourse by summoning the present proposed third party to depose and on failure to bring on record as co-defendant to the suit. What the third party proceedings speaks is the liberty of the defendant to the suit and not the liberty of a third party. However, it is the claim of the third parties, to whom that third party proceedings have no application, but for to say had the defendants 1 to 3 in the two suits invoked that provision, the position of the proposed parties may be in a better footing for they could have been brought on record or atleast deposed on behalf of the defendants to the suit as part of the contest. Thereby it can be said the proposed parties to come on record either claiming as proper or necessary parties as the case may be is on showing that the Government even did not take recourse to the said third party proceedings and thereby they have no other option but for to invoke Order I Rule 10 C.P.C to come on record.

9) No doubt, to come on record, it must be demonstrated under Order I Rule 10 (2) C.P.C, which is even the power of the Court to implead any party, who must be either necessary or atleast a proper party or even to delete the name of any party from unnecessarily impleaded, at any stage, before the pronouncement of judgment. It can be said thereby, as contended by the learned counsel for the plaintiff that, the provision has no application as of right of proposed party to come on record. However, once the application is considered as an intimation to the Court of the necessity to come on record, the Court has to exercise the power contemplated by Order I Rule 10 (2) C.P.C. At the cost of repetition for that, the parties must prove to come on record and must demonstrate that they are either necessary parties or atleast proper parties for the effective adjudication of the lis, for the Court in such case to implead to avoid multiplicity of proceedings.

10) The law is fairly settled from the expression of the Apex Court in ***Vijay Pratap and others vs Sambhu Saran Sinha and others***^[1] wherein it was dealt with who are necessary parties and who are proper parties. The facts need not be repeated herein to answer the same, from what is referred supra is suffice particularly with reference to the undisputed facts covered by clause 4 of the agreement for protecting the interest of the proposed parties herein.

11) Once such is the case, when the agreement in undisputed terms accepted by third party as second party to the agreement to make a claim from the Government to directly pay for the works done by them and it is the written statement contest of the Government in the two suits that out of the suit claim, most of the works done by the second party to the agreement and payments made or to be made and it is pursuant to which they are necessary parties to the suit or atleast proper parties for the effective adjudication of the lis covered by the two suits as contemplated by

the wording of Order I Rule 10 (2) C.P.C.

12) Once such is the case, merely because the suit ripened to the stage of arguments, the Court cannot deny even by sitting in revision but for to observe when the applications were filed way back in 2012 nothing can be demonstrated against the proposed parties of the four years lapse but for intervening circumstances and facts showing the lower Court after hearing the matter rejected their applications which made them to maintain the revisions to vindicate their rights.

13) No doubt, in the vacate stay petition filed by the plaintiff/ respondent No.1, there is a document enclosed as page No.29 with neat copy at page No.30 and drawn the attention of the Court that on the said document, on behalf of the proposed parties, one T.Singer Swamy, GPA holder signed and there was a release/ discharge endorsement. However, when the same is not admitted by the proposed parties in the course of hearing, it is a matter of contest even within the scope of the wording of Sections 17 to 23 read with Section 58 of the Evidence Act. No doubt, the prayer in the application is to come on record in both the suits as co-plaintiff. The proposed party has no right to come as co-plaintiffs in the facts of the two suits. They are at best entitled to come on record as co-defendants either to support the contest of the other defendants—government or to say how the plaintiff is not entitled to the suit claim, if any, but for by them.

14) Having regard to the above, the petitioner is required to be impleaded as defendant No.4 respectively in the two suits. It is made clear that in such event, the proposed party impleaded as 4th defendant is entitled to file written statement and adduce evidence, including to cross examine the witnesses to the suit already examined on the dates being fixed by the Court. It is needless to say any filing of written statement to set out their defence to be made

is within 15 days from today and any right for cross examination is on filing a memo of who are the witnesses required in both the suits to be cross examined to recall by trial Court and permit such cross examination and re-examination as the case may be. Needless to say, thereafter the petitioner is entitled to adduce their evidence as co-defendant to the suit.

15) Accordingly and with the observations, the revision petitions are allowed to the above extent, directing the lower Court to carry the amendment and to direct the plaintiff to file neat copy showing the proposed party and liberty is given to the plaintiff if at all they want to amend pleadings against the proposed defendant No.4 in the respective suits with consequential amendments, they can do so and also given liberty to file any rejoinder to the plaint from any written statement to be filed within 15 days from today by the defendant No.4 newly added party and it is thereafter, the proposed party—defendant No.4 can file memo of who are the witnesses to be recalled for recall by the trial Court to cross examine and re-examine and later to adduce evidence of the 4th defendant, if any. No order as to costs.

16) Consequently, pending miscellaneous petitions, if any, shall also stand dismissed. No costs.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.20.07.2016
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[\[1\]](#) AIR 1996 SC 2755