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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: January 14, 2016

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W.P.(C) 8496/2015

EUROPEAN MOTOR WORKS
PRIVATE LIMITED

.....Petitioner

Represented by: Mr.Amit Mishra, Advocate

versus

ICICI BANK LIMITED & ORS

.....Respondents

Represented by: Mr.Puneet K.Bhalla, Advocate for
R-1
Ms.Amita Dhall, Advocate for R-2
and R-3
Mr.P.R.Chopra, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Having heard learned counsel for the parties, we find inchoate pleadings by the respondent bank in its application under Order 1 Rule 10 of the Code of Civil Procedure seeking impleadment of the writ petitioner.
2. Concededly the transaction was between ICICI Bank and Link Engineers Private Ltd. with co-borrower being Siddharth Sikka. Loan was sanctioned to purchase a 'PILOTE FIAT DUCATO/MOTORHOME P 730 LACA' (a motor vehicle).
3. It appears that the petitioner was to facilitate the purchase of vehicle i.e. to either act as an agent or render service for the import of the vehicle,

and out of the loan amount sanctioned in sum of ₹80,40,000/- (Rupees Eighty Lacs Forty Thousand only), some amount was directly paid, of course to the account of the borrower and the co-borrower, to the writ petitioner.

4. There is a default, and it appears that the vehicle has changed hands. The borrower and the co-borrower are in default and the bank has proceeded to recover the same. Proceedings are pending before the Debts Recovery Tribunal. Subsequently an application was filed to implead the writ petitioner as a respondent and by a cryptic non-reasoned order without bringing out as to why writ petitioner was a necessary or a proper party, vide order dated September 15, 2014 the Debts Recovery Tribunal impleaded writ petitioner as a respondent which order has been upheld by the Debts Recovery Appellate Tribunal on March 20, 2015. Needless to state the said two orders are under challenge.

5. Order 1 Rule 10(2) of the Code of Civil Procedure reads as under:-

“(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, 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'.”

6. A plain reading of the provision would show that a person would be a proper party whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate and settle all the questions involved in the suit.

7. In the decision reported as AIR 1958 SC 886 Razia Begum v Anwar Begum the Supreme Court had laid down the following principles regarding the power of the Court to implead parties by virtue of Rule 10(2) of the Code of Civil Procedure :-

“20. As a result of these considerations, we have arrived at the following conclusions :-

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one 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; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in section 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of sections 42 and 43 of the Specific Relief Act;”

8. A reference may also be made to the decision of the Supreme Court reported as 1992 (2) SCC 224 Ramesh Hirachand Kundanmal v Municipal

Corporation of Greater Bombay. In the said case, the plaintiff was a dealer on the land held by the Hindustan Petroleum Corporation and was in possession of a service station. The Municipal Corporation issued a notice to the plaintiff for demolition of a certain construction alleging that it was unauthorized. The plaintiff filed a suit for permanent injunction against the Municipal Corporation. Hindustan Petroleum applied for being impleaded as a defendant on the ground that it had material to show that the structure was unauthorized. The prayer was granted by the Courts below. The plaintiff approached the Supreme Court. Allowing the appeal and setting aside the order, the Supreme Court held that the Hindustan Petroleum Corporation was neither necessary nor proper party to the proceedings. It was held that the person to be joined must be one whose presence is necessary as a party. The test is not whether his presence is necessary for the correct solution of the dispute before the Court but whether the order would affect him or his interest would be prejudiced. Relevant discussion is being noted herein below:-

“6. 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 touch stone of Order I 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

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8. *The case really turns on the true construction of the Rule in particular the meaning of the words "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." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.*

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14. *It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by*

curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'

9. The test which is to be applied, while considering an application under Order I Rule 10(2) of the Code of Civil Procedure for impleadment of a party has been summarised in the decision of the Madhya Pradesh High Court reported as AIR 1960 MP 84 Sampatbai v Madhusingh Gambhirji as under:-

“The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervenor must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally -- that is by curtailing his legal rights. This is the test which has been applied in Amon v. Raphael Tuck and Sons Ltd., 1956-1 All ER 273, in connection with R.S.C. Order 16, Rule 11 which is similar to Order 1, Rule

10, C. P. C. Again as pointed out in Dollfus Mieg et Compagnie S.A.V. Bank of England, 1950-2 All ER 605 at p. 611, in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established".

10. It is apparent that a party claiming impleadment must have an interest in the pending litigation if the party has to be impleaded, but the interest must be of a kind that the presence of the party is necessary to settle all the questions involved in the suit.

11. The decision reported as 1950-2 All ER 605 Dollfus Mieg et Compagnie S.A.V. Bank of England, cited in the aforesaid decision of the Madhya Pradesh High Court, illuminates us a lot on the subject of impleadment of a third party in a pending legal proceedings on the subject as to what kind of precise nature of the interest of the party sought to be impleaded in the property in dispute needs to be identified.

12. The said decision was dealing with Order 16 Rule 11 RSC corresponding to Order 1 Rule 10 in India.

13. In said case 64 identifiable gold bars belonging to a French company were looted by the Germans during the war on their occupation of France and were later seized by the allied armies. The custody of the gold bars was acquired by a tripartite commission, consisting of the representatives of the Government of UK, USA and France for the purposes of eventually distributing, in accordance with the provisions of the Treaty, the gold and treasure looted by the Germans. The gold bars were conveyed to England

and deposited by the Commission with the Bank of England. The French company instituted an action against the bank claiming delivery of the gold bars. The bank applied for an order to set aside the writ on the ground that the 2 foreign Government, USA and France had declined to submit to the jurisdiction of the English Courts. The claim of the company was upheld and leave was given to the bank to appeal to the House of Lords. At that stage the two governments, USA and France applied to be added as defendant to the action.

14. It is significant to note that in the application the applicants did not assert a title to the bars but they urged that if they should establish that they have possession of control of the bars through the bank the French company would fail to obtain an order from the Court in its favour by reason of the doctrine of immunity applicable to foreign sovereign states and therefore the applicants, the Government of USA and France would be entitled to retain possession and control over the bars and thus be able to dispose them of.

15. It was held that whether or not the applicants had a proprietary right in the subject matter of the action sufficient to entitle them to be joined as defendants, the true test lay not so much on an analysis of what were the constituents of the rights, but rather in what would be the result on the subject matter of the action if their rights could be established. It was held that the applicants had a direct interest in the subject matter of the action which was similar to a proprietary right and was of such a nature as would entitle them to be joined as defendants as in their absence their claim could not be eventually put forward.

16. After referring to the decision reported as 1892-1 Ch 487 Moser vs. Marsden, in which it was held that the fact that the person's interest would

be commercially affected by a judgment would be insufficient to make the person a party and that that person should be directly interested in the subject matter in dispute, Wynn Parry, J. observed as follows at pages 611-612:-

“On the other side of the line in Vavassur vs. K.Krupp, (1878) 9 Ch D 351 to which I had already referred, which established that a proprietary right of the proposed defendant in the subject matter of the action is sufficient. The question here is; on which side of the line does this case fall? For the purposes of this application, the applicants do not assert a title to the property in question, and, therefore it cannot be asserted that they have a proprietary right as the phrase is used in (1878) 9 Ch D 351. What they assert is that if they can establish that they have possession or control of the property in question through the defendant bank, then, by virtue of the doctrine of immunity which apply to foreign sovereign states, 2 results might well follow (i) the plaintiffs must fail to obtain any order from this Court in their favour and (ii) the applicants will retain the possession and control over the remaining bars of gold and will be able to dispose of them. In other words, although the applicants do not assert title to the bars of the gold, the result of a successful intervention by them would be that as between the plaintiffs and themselves, they would for all practical purposes, be the owners. It seems to me that true test lies not so much in an analysis of what are the constituents of the applicant's rights but rather in what would be the result on the subject matter of the action if those rights could be established. That is the approach which I have made. Viewing the matter in this way, it is impossible, in my judgment, to say that the applicant have only an indirect interest of the nature which fell to be considered in 1892-1 Ch 487. They appear to me to have something more namely, a right which although may arise indirectly, viz. by the invocation of the doctrine of immunity and through the defendant bank as bailee nevertheless results in a direct interest in the subject matter of this action and is a right merely akin to the proprietary right which was under consideration in (1878) 9 Ch D 351. There is no authority directly

bearing on the point but, on the analysis which I have made of the nature of the applicant's interest in the matter, I have come to the conclusion that I ought not to say that I have no jurisdiction to entertain the application on the short ground which counsel for the plaintiff puts forward, viz. that the applicants could not show a proprietary right, and, therefore did not come within the second of the three classes of cases to which I have referred but that I am dealing with right of such a nature as, on an application by the applicants in the position of the present applicants should result in an order that they be joined as defendants, provided it can be shown that in their absence the claim to the right will not effectually be put forward.”

17. The decision brings out that the true test lies not so much in an analysis of what are the constituents of the applicant's rights but rather in what would be the result on the subject matter of the action if those rights could be established.

17. In the decision reported as 1956-1 All ER 273 Amon vs. Raphael Tuck & Sons Ltd., the aforesaid view was followed. In said case the plaintiff filed an action against the defendants for damages and injunction on the ground that the plaintiff was the first inventor of a new design of adhesive dispenser in the shape of a pen, that the plaintiff disclosed to the defendant the details of the invention in the course of negotiations with the defendant for marketing the pen and that the defendant had wrongfully made use of the information by manufacturing an adhesive dispenser of the same design as invented by the plaintiff. The defendant, while resisting the claim applied under Order XVI Rule 11 R S C to join as defendant a third party, urging amongst other things that the third party was the first inventor of the adhesive dispenser. It was held that the presence of the third party was necessary to enable the court to adjudicate completely the subject matter in

dispute as the enjoyment of the legal right of the third party would be curtailed by the relief asked for by the plaintiff in the action.

18. Delvin, J. explained the scope of the rule in these terms at page 279.

“It is not I think disputed that 'the cause or matter' is the action as it stands between the existing parties. If it were otherwise then anybody who showed a cause of action against either a plaintiff or defendant could of course say that the question involved in his cause of action could not be settled unless he was made a party. Counsel for the defendant does not contend for so wide a construction as that: but he submits that, if the intervener has a cause of action against the plaintiff relating to the subject matter of existing action the Court has power to join the intervener so as to give effect to the primary object of the order, which is to avoid multiplicity of actions. In the present case he submits that the subject matter of the dispute between the existing parties is the “ownership”. If I may so put it, of an invention: the plaintiff claims that he is the owner of it and the intervener alleges that he is, and both disputes ought to be determined at the same time. This construction stresses the amplitude of the closing words of the passage which I have just cited from Order 16 Rule 11 'all the questions involved in the cause or matter.' The alternative construction treats the opening words as dominant. 'All the questions involved' is a phrase that unless it is cut down would be impossibly wide. It is cut down, the plaintiff submits by the opening words of the passage which I have cited. The intervener must be a party whose presence is necessary to enable all questions in the action to be adjudicated on and settled, but the question must be one which has to be adjudicated on in the issue between the existing parties and not in any new issue raised by an intervener. The criticism that at once suggests itself of this construction is that it is impossibly narrow. If the adjudication is limited to something that lies between the plaintiff and the defendant what parties can be necessary to it except the plaintiff and the defendant? The court is for this purpose concerned only with action “in person and in such actions either the necessary defendant is sued or the action fails. If all the parties who ought to have been joined, under the first limb of the rule are joined, who

are the necessary parties contemplated by the second limb”

19. Answering the question, Delvin, J. further observed as follows at pages 289-290:-

“Counsel for the plaintiff next submits that the intervener's interests cannot be affected anyway because if the plaintiff is wrong, there will be no injunction: and if he is right, the injunction can be granted only on the basis that the duty of confidence was owed to the plaintiff and not to the intervener. This argument in my opinion, misconceives the point. Whenever a plaintiff seeks to restrain a defendant from dealing with his property and an intervener claims that the property is his, the plaintiff can say 'If I am wrong I shall not get an injunction and the intervener's right will not be affected: if I am right the intervener has no rights to be affected anyway.' The point is that the intervener is entitled to be heard on the issue whether the plaintiff is right or wrong so that he may be bound by the order made.

The final submission of counsel for the plaintiff is more far-reaching than the others. He submits that the action and the intervener's claim are concerned with rights in contract and not rights of property and therefore the case does not come within the term “proprietary right” as set out in the note in Annual Practice 1995 at page 232. I am not of course required to construe the phrase as if it were contained in a statute. If I were I should see no reason why rights under a contract should not be called proprietary rights just as much as rights to physical property. The phrase, however, is not used definitely. The three categories formulated in the note are not exhaustive. Indeed, I do not think that they should be treated as having been formulated independently. There is one common principle running through them all, and, for my part, I should prefer to apply a test based on that principle rather than to enquire whether the case to be determined falls into one or other of the three classes. There is not, for example any real distinction between the cases which related to specific performance and those which related to

proprietary rights. As Wynn Parry, J. said in 1950-2 All ER 605 at page 611.

It seems to me that the true test lies not so much in any analysis of what are the constituents of the appellant's rights, but rather in what would be the result on the subject matter of the action if those rights could be established.

I respectfully agree with that. I think that the test is May the Order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights?

It may be true as counsel for the plaintiff submits that the authorities so far have been dealing with rights to physical property, but in my judgment the principle applies equally to contractual rights. I think that in this case the test is satisfied that I have jurisdiction to make the Order and that is one which having regard to the question involved in the action, it is proper that in the exercise of my discretion I should make.”

20. Decision brings out that the principle relating to impleadment in decisions involving rights to physical properties are equally capable of being applied to contractual rights.

21. Regretfully, neither the order dated September 15, 2014 passed by the Debts Recovery Tribunal nor the order dated March 20, 2015 passed by the Debts Recovery Appellate Tribunal has dealt with the issue arising concerning writ petitioner's impleadment as prayed by the respondent No.1 bank in its application seeking impleadment. The two orders do not bring out the reasons why presence of the writ petitioner is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings before the Debts Recovery Tribunal.

22. This is so conceded by learned counsel for the parties.

23. The writ petition is accordingly disposed of setting aside the order dated September 15, 2014 passed by the Debts Recovery Tribunal as also the order dated March 20, 2015 passed by the Debts Recovery Appellate Tribunal. Application filed by the first respondent seeking impleadment of the writ petition is revived for adjudication afresh before the Debts Recovery Tribunal which shall decide the application guided by the law concerning impleadment as discussed above.

24. No costs.

CM No.18294/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 14, 2016

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