

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3337 of 2017

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 30.03.2017 passed in I.A.No.549 of 2016 in O.S.No.37 of 2012 on the file of the Principal Senior Civil Judge, Chittoor, wherein and whereunder an application filed under Order 1 Rule 10 of C.P.C. and Rule 28 of the Civil Rules of Practice, to implead the proposed parties as defendant Nos.3 and 4 in the suit was allowed in part permitting the petitioner to implead the proposed third respondent as defendant No.3 in the main suit.

2) For the sake of convenience, the parties herein be referred to as arrayed in the suit.

3) The plaintiffs filed the above suit for recovery of Rs.9,40,230/- from defendant Nos.1 and 2. Defendant No.1 is a paramount marketing corporation, promoted by defendant No.2. Defendant No.2, who is having full control over the management of defendant No.1. It is said that defendant No.2 induced the plaintiffs to invest money into the defendants' business, promising the plaintiffs to get good benefits. Defendants claimed to have floated different schemes and brochures explaining the same came to be issued in the name of defendant No.1, for each of the scheme, containing the terms and

conditions of the said schemes. The plaintiffs claim to have invested Rs.1,30,000/- in some schemes and Rs.1,34,000/- in some other schemes, totaling to Rs.9,40,230/-. As both the defendants failed to perform their part of contract by not making repayments as agreed upon, a suit came to be filed to direct the defendants to pay a sum of Rs.9,40,230/- with interest from the date of filing of suit. Pending the suit, I.A.No.183 of 2012 came to be filed requesting the Court to attach the properties of the defendants, as they are planning to close down their businesses with a malafide intention to cheat the plaintiffs and others. The said I.A. was allowed and attachment orders were issued. Subsequently, the proposed parties ie. The Manager, Axis Bank, No.4 Good Shed Street, Madurai, filed a petition for setting aside the exparte order stating that some of the items of attached property have been transferred to the Indian Overseas Bank, Meenakshi College Branch, Madurai, Tamil Nadu. As such, the plaintiffs filed the present application seeking impleadment of the proposed parties as defendant Nos.3 and 4.

4) Defendant Nos.1 and 2 failed to file counter and the proposed defendants were set exparte.

5) After analyzing the material on record, the trial Court allowed the petition permitting the plaintiffs to implead the third respondent as defendant No.3 in the suit. Challenging the same the present revision is filed.

6) Learned counsel for the petitioner would submit that respondent No.3 in the counter filed in I.A.No.183 of 2012 clearly mentioned that the amount lying in three accounts was withdrawn and sent to the account of the proposed respondent No.4/ defendant No.4, as such the proposed party is a necessary party to the suit and if the proposed party is not impleaded as a party to the suit, the plaintiffs would sustain irreparable loss and injury.

7) In order to appreciate the rival submissions, it may be useful to refer to Order I, Rule 10 of C.P.C. which reads as under:

“Order I. Rule 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 bona 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.

Where defendant added, plaint to be amended. (4) 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, Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

8) From a reading of the above said provision, it is clear that sub-rule (2) of Rule 10 of Order I gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party and whose presence in the court is essential for effective determination of the issues involved in the suit.

9) The scope and object of Order 1 Rule 10 of C.P.C. was considered in detail by a learned Single Judge of this Court in

*A.Gyaneshwar Rao v. Mahmood Shaireef and another*¹

wherein it has been held as under:

“10. The principles that could be said to emerge in regard to application of the provisions enacted in sub-Rule (2) of Rule 10 of O. 1. C. P. C. and in particular the expressions "whose presence before the court may be necessary" and "in order to enable the court to effectively and completely adjudicate upon and settle all then question involved in the suit" are:

(1) "Settle all the questions involved in the suit" should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject-matter of the suit involving even the third party's claim and interest.

(2) The question of addition of parties under R. 10 (2) of O. 1 is generally not one of initial jurisdiction but of a judicial discretion which has to be exercised in view of the facts and circumstances of each case. The jurisdictional aspect is in the limited sense contemplated under Sec. 115 of the C. P. C.

(3) For effectual and complete adjudication of the questions involved in the suit, the presence of a third-party ,even if it is not necessary, but if proper, should be allowed to be added as a party if applied for.

(4) In a suit relating to property, the person to be added as party should have a direct interest as distinct from a commercial interest in the subject-matter of the litigation.

(5) Where the subject-matter of a litigation is a declaration as regards status or a legal character ,

¹ AIR 1982 AP 155 (1)

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 effectual and completely to adjudicate upon the controversy.

(6) The rule laid down in Sec. 43 of the Specific Relief Act is not exactly a rule of res judicate. It is narrow in one sense and wider in another.”

10) It is the case of the plaintiffs that the Axis Bank, who is allowed to be added as a defendant in the suit, transferred the shares/property to the proposed fourth respondent. From the judgment of this Court referred to above, it is clear that addition of parties is generally not one of initial jurisdiction but of judicial discretion which has to be exercised, having regard to the facts and circumstances of each case. The settlement of all questions involved in the suit should be construed to mean, not restricting the scope between the parties to the suit, but to a wider area concerning the subject matter of the suit involving even the third party's claim and interest. It has been further held that for effectual and complete adjudication of the questions involved in the suit, the presence of third party even if it is not necessary, but if proper, should be allowed to be added as party.

11) Having regard to the facts and circumstances stated above and in view of the judgment referred to above, I am of the opinion that the proposed fourth respondent is proper party as

the third defendant transferred the shares of the defendant Nos.1 and 2 to the said bank.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

03.11.2017
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