THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1571 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/plaintiff, assailing the order, dated 15.11.2016, of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.968 of 2016 (old I.A.No.229 of 2014) in O.S.No.623 of 2011 filed under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, requesting for permission to implead the State Bank of India, the 2nd respondent, as the 2nd defendant in the suit.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff. Though both the respondents, that is, sole defendant and the proposed defendant are served with notices, they have not entered appearance. I have perused the material record.

3. The facts of the case, which are necessary to be stated as a prelude to this order, in brief, are as follows:- 'The petitioner/plaintiff brought the suit against the sole defendant for recovery of money with interest and costs. In the pending suit, the sole defendant, having filed the written statement, *inter alia* contended therein that the proposed party, that is, State Bank of India is a necessary party and that in its absence, the suit cannot be effectively adjudicated. Thereafter, the plaintiff filed the afore-stated interlocutory application requesting for permission to

implead the State Bank of India as the 2nd defendant in the suit. That application was resisted by the sole defendant as well as the proposed party/Bank by filing counters. On merits and by the order impugned in this Civil Revision Petition, the said petition was dismissed. Therefore, the plaintiff is before this Court.'

4. The case of the plaintiff, in support of its request for impleading the State Bank of India as the 2nd defendant in the suit, in brief, is as follows:- 'In a suit for recovery of money against the defendant, the basis is the supplies made by the plaintiff to the defendant pursuant to the purchase orders, on various dates. The material was supplied and utilised by the defendant. At the time of placing of the purchase orders, letters of credit have been issued by the State Bank of India, but, the said letters of credit have been dishonoured when presented for realisation. In the normal course of trade and as per trade practice, the letters of credit ought to have been honoured. In view of the dishonour of the letters of credit contrary to the trade and trade practice, the State Bank of India is a necessary party to the suit. Since breach of contract has been committed and there was failure in making payment pursuant to the letters of credit, which the State Bank of India is bound to pay, the presence of State Bank of India as a party defendant to the suit is necessary. Addition of State Bank of India as a party to the suit would be helpful in arriving at a just decision in the matter and also in fixing the liability, if necessary, on the State Bank of India. Hence the petition is filed.'

5. Though the sole defendant is not before this Court, his case in his counter is that the State Bank of India is not a necessary party.

6. The case of the proposed 2nd defendant/State Bank of India as stated in its counter filed before the trial Court, in brief, is as follows:- 'The material allegations in the affidavit filed in support of the petition are false. The letters of credit have been issued by the State Bank of India to the defendant in connection with the business transactions which the defendant had with the plaintiff. The suit transaction relates to the parties to the suit. The State Bank of India is in no way concerned with the purchase orders placed by the defendant and supply of material by the plaintiff. The petition seeking impleadment of the State Bank of India as a party to the suit is unnecessarily filed. The plaintiff, if at all is entitled to a decree, has to obtain a decree for recovery of money from the defendant. There is no privity of contract between the plaintiff and the State Bank of India.'

7. At the hearing, the learned counsel for plaintiff would submit as follows:- 'Though the consequential amendments are not shown in the petition and the affidavit filed in support of the petition filed for impleadment of the State Bank of India, a right is reserved to file a separate application for seeking consequential amendment, in the event the request for addition of State Bank of India as a party to the suit is granted. The defendant, in his written statement, has taken a specific plea that the State Bank of India is a necessary and proper party. In view of the facts of the case, which are undisputed, the State Bank of India is a necessary and proper

party. Therefore, an opportunity may be granted to the plaintiff to have the case decided on merits in the presence of State Bank of India as a party defendant.'

8. Having regard to the facts, pleadings and submissions, which are extracted supra, in detail, and the contentions urged before this Court as well as the specific contention of the sole defendant in the written statement that the State Bank of India is a necessary party and that the suit has to be adjudicated in its presence and in the light of the further fact that the letters of credit were dishonoured by the State Bank of India contrary to the trade and trade practice as per the submissions of the plaintiff, this Court is of the considered view that sufficient cause is shown for permitting to implead the State Bank of India as a party to the suit. No doubt, as per the Civil Rules of Practice the plaintiff ought to have sought consequential amendments in the present petition filed for permission to implead the party instead of reserving a right to file the application for consequential amendments later. However, considering the fact that technicalities should not come in the way of rendering justice and that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, this Court is of the considered view that on the ground that the consequential amendments are not shown in the petition, the petition need not be dismissed. As rightly contended the addition of the State Bank of India as a party defendant to the suit is necessary for determining the controversy and giving a quietus to the dispute.

9. On the above analysis, this Court finds that the trial Court is not justified in dismissing the petition and that, therefore, the order impugned brooks interference.

10. In the result, the Civil Revision Petition is allowed and the order, dated 15.11.2016, of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.968 of 2016 (old I.A.No.229 of 2014) in O.S.No.623 of 2011, is set aside. Consequently, I.A.No.968 of 2016 is allowed permitting the petitioner/plaintiff to implead the State Bank of India as 2nd defendant in the suit. However, considering the fact that the suit is sufficiently old, the plaintiff is directed to file an application seeking consequential amendment as expeditiously as possible and preferably within a period of two (02) weeks from the date of receipt of a copy of this order. The trial Court shall endeavour to formally dispose of the said application and also the suit as expeditiously as possible and in strict accordance with the procedure established by law, however, after giving opportunities to the defendant to file additional pleading and the impleaded defendant to file its written statement.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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M.Seetharama Murti, J

07th August, 2017
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