

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2018

Coram

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

O.S.A. No.341 of 2017
and
C.M.P.No.21956 of 2017

M/s.Sathiapal (India) Ltd., rep. by
Director M.Ravikumar ... Appellant

Vs.

M/s.Enkem Engineers Private Ltd.,
rep. by its Director P.Subramani ... Respondent

Original Side Appeal is filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order and decretal order dated 09.08.2017 in A.No.3604 of 2017 in C.S.No.810 of 2006.

For Appellant : Mr.T.R.Rajagopalan,
Sr. Counsel for Mr.M.Rajaraman

For Respondent : Mr.A.R.Karunakaran

JUDGMENT

(Judgment of the Court was delivered by
M.M.SUNDRESH,J.)

The appellant, being the plaintiff, filed an application seeking to amend the cause title on the ground that pursuant to the resolution dated 31.12.2004, amendment to Section 21 of the Companies Act, 1956 followed by approval granted by the Ministry of Finance, Department of Company Affairs, Registrar of Companies dated 02.03.2005, its name was changed to "MM Infrastructures Corporation Limited". A Certificate was also issued by the Registrar of Companies in accordance with Section 23(1) of the Companies Act, 1956. The application filed was dismissed by the

learned single Judge interalia holding that the change had taken place even prior to the filing of the suit. Thus the application lacks bonafides and so is the case of the suit filed. Incidentally, it was held that the appellant itself was not in existence on the date of filing of the suit. Challenging the same, the present appeal has been filed.

2.Learned counsel appearing for the appellant would submit that the facts are not in dispute. What has been done is a bonafide mistake. The learned single Judge has committed an error in giving a factual finding on the bonafides. There is no change qua the entity. The appellant has transformed itself to the subsequent company, which name is stated to have been incorporated. The appellant did not have any benefit in filing the suit in its name. Thus the mistake being bonafide and the respondent being not affected by the proposed amendment, the appeal will have to be allowed. It is further submitted that the dismissal of the application will have a cascading effect of dismissing the suit itself.

3.Learned counsel appearing for the respondent would submit that the question as to whether there exists bonafide or not will have to be decided in the suit. The appellant did not file the suit admittedly in the name of "MM Infrastructures Corporation Limited" though resolution was passed on 31.12.2004 followed by the approval of the Ministry of Finance dated 02.03.2005. Thus, even on the date of filing of the suit, the appellant did not have any legs to stand. The application has been filed belatedly after all these years. Hence no interference is required.

4.Considering the submissions made, we are of the view that the learned single Judge ought to have allowed the application as absolutely there is no prejudice that has been caused to the respondent. It is not as if there are two entities. Prima facie, the proceedings of the Ministry of Finance and the order passed by the Registrar of Companies are not in dispute. We are of the further view that dismissing the application would ultimately result in dismissal of the suit. There is no material to hold lack of bonafide in the application filed, which can, at best be stated to be an oversight or irregularity. Such a mistake committed would not go to the root of the matter, affecting the rights of the parties. There is no dispute that the entity being the same in existence. Therefore, we are of the considered view that the order passed by the learned single Judge would require interference. Accordingly, the order dated 09.08.2017 stands set aside and the application in A.No.3604 of 2017 is allowed.

5.However, this order will not stand in the way of the respondent to raise such other defence with specific reference to the maintainability of the suit, the bonafides on the part of the appellant and the existence of the documents. We also request the learned single Judge to frame an additional issue in this regard. After framing the issue, the parties are at liberty to let in evidence. The appellant is granted seven days time from the date of receipt of a copy of the order to carry out the amendment. We make it clear that the issue will have to be gone into on its own merit without being influenced by any of the observations made in this order.

6.With the above observation and direction, the Original Side Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+ 1 cc to M/s. M. Rajaraman, Advocate Sr.38129

O.S.A.No.341 of 2017

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