

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 6TH DAY OF JULY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.1472 of 2017

in

C.S. No.609 of 2010

M/s.Deepti Integrated Logistic Private Ltd.,
Rep. By its General Manager
Mr.B.Srinivasa Rao
No.72, 5th Street,
AH Block, Shanthi Colony,
Anna Nagar, Chennai - 600 040

.. Plaintiff / Applicant

Vs.

1.M/s.D.D.R.Property Developers and Builders
Private Limited (after name change)
M/s.Devadoss Reddy Property Developers &
Builders Private Ltd., (Prior to name change)
Having their Registered office
at Old No.185, New No.435, T.H.Road,
Kaladipet, Chennai - 600 019.

2.Mr.R.Devadoss Reddy
S/o.Sri.N.Raghava Reddy
Managing Director
M/s.D.D.R.Property Developers and Builders
Private Limited (after name change)
M/s.Devadoss Reddy Property Developers &
Builders Private Ltd., (Prior to name change)
Old No.185, New No.435, T.H.Road,
Kaladipet, Chennai - 600 019.

3.M/s.D.R.Logistic Private Limited

(after name change)

M/s.Devadoss Reddy Logistic Private Ltd.,

(prior to name change)

Having their Registered office

at Old No.185, New No.435,

Thiruvottiyur High Road,

Kaladipet, Chennai - 600 019.

.. Defendants / Respondents

Application praying that this Hon'ble Court be pleased to permit the Applicant to amend the cause title, Paragraph 1 and statement of address of the Plaintiff in C.S.No. of 2010 to reflect "Emgee Infrastructure Holdings (India) Pvt. Ltd., formerly known as Deepti Integrated Logistics Private Limited Rep. by its General Manager Mr.B.Srinivasa Rao No.134/62, Level III, RA Puram, Chennai-600 028", instead of "Deepti Integrated Logistics Private Limited Rep. by its General Manager Mr.B.Srinivasa Rao No.72, 5th St, AH Block, Shanthi Colony, Anna Nagar, Ch-600 040".

This Application coming on this day before this court for hearing, the court made the following order:

This application has been filed by the Plaintiff under Order VI Rule 17 of CPC, seeking permission to amend the cause title in paragraph and statement of address of the plaintiff in CS.No.609 of 2010, to reflect "Emgee Infrastructure Holding (India) Private Limited, formerly known as Deepti Integrated Logistics Private Limited, represented by its General Manager, Mr.B.Srinivasa Rao, No.134/62, level III, RA Puram, Chennai 600029", instead of "Deepti Integrated Logistics Private Limited represented by its General Manager Mr.B.Srinivasa Rao, No.72, 5th Street, AH Block, Shanthi

Colony, Anna Nagar, Chennai 600040'."

2. The suit has been filed by "Deepti Integrated Logistics Private Limited, represented by its General Manager, Mr.B.Srinivasa Rao, No.72, 5th Street, AH Block, Shanthi Colony, Anna Nagar, Chennai 600040'", against (1) M/s.D.D.R.Property Developers and Builders Private Limited (after name change), M/s.Devadoss Reddy Property Developers & Builders Private Limited (Prior to name change), (2) R.Devadoss Reddy, Managing Director of the 1st Defendant and (3) M/s.D.R.Logistic Private Limited (after name change), M/s.Devadoss Reddy Logistic Private Limited (prior to name change), seeking a judgement and decree, directing the Defendants to jointly and severally pay the Plaintiff a sum of Rs.5,01,00,000/- together with interest at 24% p.a. from the date of the plaint till the date of realisation and also to direct the Defendants to pay costs of the suit.

3. The plaint was presented on 5.7.2010. The Plaintiff was a private Limited Company, registered under the provisions of the Companies Act, 1956. The Plaintiff is engaged in the business of integrated logistics in the transportation sector for facilitation of both cargo and passenger at various locations in India, storage terminal for liquids, natural gas, warehouses, container freight station for container cargo and allied businesses. The Plaintiff wanted to expand his business activities and was looking for purchase of lands in the surroundings of Ennore Port Area, Chennai. The 2nd Defendant represented that he had in his possession and control of about 750 acres in Vallur and Edayanchavadi Village Ponneri Taluk, Tiruvallur District. The Plaintiff intended to purchase lands for

consideration of Rs.15 lakhs per acre. A Memorandum of Understanding was entered into between the Plaintiff and the 1st Defendant, which is also a Company incorporated under the provisions of the Companies Act, 1956, on 30.11.2006. The Defendants were under obligation to provide copies of documents of title and other connected documents relating to the suit lands. The Plaintiff paid an advance of Rs.5.5 crores by cheque for Rs.1 crores and another cheque for Rs.1.5 crores and another cheque for Rs.1.5 crores and another amount of Rs.1.5 crores by another cheque. Since the transaction was protracted, a settlement deed dated 5.7.2007 was entered into between the Plaintiff and the 1st Defendant.

4. According to the said settlement deed, it was agreed that the Memorandum of Understanding dated 30.11.2006 would stand terminated and the 1st Defendant would return the advance amount of Rs.5.5 crores received from the Plaintiff through cheques. The title deeds, which had been handed over by the Defendants, were returned by the Plaintiff, by letter dated, 05.07.2007. The Defendant issued three cheques for Rs.1.5 crores, Rs.3 crores and Rs.1 crore respectively. The 1st cheque for Rs.1.5 crores was honoured. The second cheque for Rs.3 crores was dishonoured. The Plaintiff had issued statutory notices under Section 138 of the Negotiable Instruments Act. The third cheque for Rs.1 crore was also dishonoured. Again notices had been issued by the Plaintiff under Section 138 of the Negotiable Instruments Act.

5. The Plaintiff had lodged a complaint with the Central Crime Branch, Chennai and this was registered as Cr.No.428 of 2008 on 26.6.2008 and a First Information Report was also registered. The 2nd

Defendant was arrested and remanded to custody and subsequently, was released on bail. The 1st Defendant has admitted in their balance sheet the liability of Rs.5.5 crores for the year ending 31.03.2007 and a sum of Rs.3 crores for the year ending 31.3.2008. This Court had dismissed Cr.OP.No.2170 of 2008 filed by the Defendants, seeking to quash the First Information Report in Cr.No.428 of 2008. The Plaintiff has alleged large scale misuse and diversion of funds given by them to the Defendants. It is under these circumstances that the Plaintiff has instituted the suit, seeking recovery of the amount as mentioned above.

6. In the present application, the Plaintiff has filed copies of the judgement of the High Court of Andhra Pradesh at Hyderabad, dated 24.12.2010 in Company Application Nos.1466 to 1468 of 2010, which had been filed under Section 392(1)(B) read with 391 and 394 of the Companies Act, 1956 in relation to the scheme of amalgamation of Aswini Projects Private Limited, called the Transferor Company and Deepti Integrated Logistics Private Limited, the Plaintiff herein which was also called the Transferor Company and Emgee Infrastructure Holdings (India) Private Limited, called the Transferee Company. Orders were passed by the High Court of Andhra Pradesh, permitting the scheme for amalgamation. Pursuant to the said orders, this application has been filed under Order 6 rule 17 of CPC, seeking to amend the cause title to reflect the name of the Transferee Company and to describe it as formerly known as the Plaintiff Company.

7. In the affidavit filed in support of this application, the authorised representative has stated that the Defendants has also

filed a written statement and that the Plaintiff Company had undergone a scheme of amalgamation thus resulting in change of name. Along with this application, the Plaintiff has also filed applications to file a reply statement to the written statement filed by the Defendants and also to produce additional documents, which were the orders passed in the proceedings under Section 138 of the Negotiable Instruments Act.

8. The said two applications relating to filing of a reply statement and production of additional documents were allowed by this Court on 8.6.2018. The present application was held over by the Court since the counter affidavit said to have been filed by the Defendants was not available in the court bundle. Thereafter, the counter affidavit was reconstructed and presented in Court. The matter came up again on 18.6.2018 and on that date, orders were passed, allowing the said application and directing the Plaintiff to carry out amendment and file an amended copy by 4.7.2018. However, at 2.15 in the afternoon session, the learned counsel for the Defendants mentioned the matter and sought rehearing of the application, claiming that he was not heard. In order to provide full opportunity, the said order was kept in abeyance and the matter was heard again on 27.6.2018.

9. In the counter affidavit filed by the Defendants, the merits of the case of the Plaintiff in the suit were denied. There was no specific answer given to the contention relating to seeking amendment of the plaint, more particularly, the cause title.

10. This Court heard the learned counsel for the Plaintiff and the Defendants. Even though orders are passed in the application,

the parties herein after shall be referred to as the Plaintiff and the Defendants.

11. The learned counsel for the Plaintiff relied on the order of the High Court of Andhra Pradesh at Hyderabad in Company Application Nos.1466 to 1468 of 2010 and stated that the Plaintiff Company had been merged with Emgee Infrastructure Holdings (India) Private Limited as per the said orders and consequently, this application has been filed. The learned counsel has stated that there is no shift in the cause of action and no fresh cause of action has been claimed by way of an amendment of the cause title.

12. The learned counsel for the Defendants, however, stated that the amalgamation order was in the year 2010 and the application has been filed very belatedly and further claimed that consequently the application is barred under Article 37 of the Limitation Act. The learned counsel also stated that the application should have been filed only under Order 1 Rule 10 of PC to add a new party. The learned counsel also pointed out Section 21 of the Limitation Act.

13. It must be mentioned that the arguments advanced by the learned counsel for the Defendants have not been sworn to an affidavit by the Defendants themselves. It must be expressed that the counsel can only argue to the extent to which the client gives instructions.

14. Be that as it may, Order 1 Rule 10 of CPC contemplates a situation where a new party has to be added or whether an existing party has to be struck off. In the present case, the Plaintiff Company had merged itself with Emgee Infrastructure Holdings (India)

Private Limited and this scheme of amalgamation had been approved by the High Court of Andhra Pradesh. Comity of Courts require that this Court also respects the said decision of the Andhra Pradesh High Court. Even though the application has been filed after some time, still the facts remains that the Plaintiff Company had been amalgamated and I am unable to understand prejudice that is caused to the Defendants by this amendment.

15. Order 6 Rule 17 of CPC is for amendment of the pleadings and pleadings also include the cause title and statement of addresses. Since the amendment is based on the orders of the High Court of Andhra Pradesh and there being only an amendment with respect to cause title, there is no shift in the cause of action already allowed. Trial also not yet commenced. As a matter of fact, there has been no progress in the suit right from the date of the institution apart from a few orders had been passed in the interlocutory applications. There is also no material to show disadvantage caused to the Defendants by permitting this amendment. The Defendants can always cross examine the witness for the Plaintiff on these aspects. But, it must again be mentioned that the amendment is only based on the orders of the High Court of Andhra Pradesh. In view of all these facts, I find no reason to pass any orders contrary to the order already passed on 18.6.2018 and accordingly, this application has to be allowed.

16. In the result, this application is allowed, as prayed for. No costs. The Plaintiff shall carry out the amendment and file the amended copy of the plaint on or before 18.07.2018.

Sd./- C.V.K.J.

06.07.2018

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/06.07.2018

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