

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

O.S.A.No.294 of 2018
and
C.M.P.No.14065 of 2018

1. M/s D.D.R.Property Developers and Builders
Private Limited (after name change),
M/s.Devadoss Reddy Property Developers and Builders
Private Limited (prior to name change)
Having their registered office at
Old No.185, New No.485, T.H.Road,
Kaladipet, Chennai-600 019.
- 2.Devadoss Reddy
- 3.M/s.D.R.Logistic Private Limited, (after name change)
M/s.Devadoss Reddy Logistic
Private Limited (prior to name change)
Having their registered office at
Old No.185, New No.435, T.H.Road,
Kaladipet,
Chennai-600 019. ... Appellants/Respondents/Defendants

-VS-

M/s.Deepti Integrated Logistic Private Limited,
Rep. by its General Manager Mr.B.Srinivasa Rao,
No.72, 15th Street, AH Block,
Shanthi Colony, Anna Nagar,
Chennai-600 040. ... Respondent/Applicant/Plaintiff

PRAYER: Appeal filed against the fair and decretal order passed
in Appln.No.1472 of 2017 in C.S.No.609 of 2010 dated 06.07.2018.

Prayer in Application No.1472 of 2017

Permit the Applicant to amend the cause title, Paragraph 1
and statement of address of the Plaint in CS 609 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 Street, AH Block, Shanthi Colony, Anna Nagar, Chennai-600 040.

For Appellant : Mr.S.Magesh
for Mr.S.Sivakumar

For Respondents : Mr.Anirudh Krishnan
for Respondent/Caveator

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

This appeal has been preferred by the appellants against allowing of application in Appln.No.1472 of 2017 in C.S.No.609 of 2010 dated 06.07.2018, filed by the respondent herein, for amending the cause title in the suit filed by the plaintiff, pursuant to the amalgamation order passed by the Andhra Pradesh High Court in Company Application No.1466, 1467 and 1468 of 2010 dated 24.12.2010, whereby the nomenclature of the respondent/plaintiff has been changed from "Deepti Integrated Logistics Private Limited" to "Emgee Infrastructure Holdings (India) Pvt.Ltd.,"

2.It is seen from the records that originally the suit was filed by the respondent for recovery of a sum of Rs.5,01,00,000/- against the appellants, being the amount due from the appellants in land transactions, as the appellants promised to procure lands to the respondent and obtained a sum of Rs.5,50,00,000/-. However, the matter was prolonged. Thereafter, a Memorandum Of Understanding was entered between the plaintiff and the defendants viz., the appellants and the respondent herein, by which the amount received by the appellants to the tune of Rs.5,50,00,000/- was agreed to be returned by the appellants and three cheques were issued for a sum of Rs.1,50,00,000/-, Rs.3,00,00,000/- and Rs.1,00,00,000/-.

3.The first cheque for Rs.1,50,00,000/- was honoured and thereafter, the balance two cheques of the appellants for a sum of Rs.3,00,00,000/- and Rs.1,00,00,000/- were returned, compelling the respondents to file this Suit as well as proceedings under section 138 of the Negotiable Instruments Act on a complaint before the Central Crime Branch, Chennai.

4.When the suit was filed on 30.06.2010, the plaintiff's name had been described as "M/s.Deepti Integrated Logistics

Private Limited, Rep. by its General Manager Mr.B.Srinivasa Rao, No.72, 5th Street, AH Block, Shanthi Colony, Anna Nagar, Chennai-600 040." Subsequently, the Andhra Pradesh High Court passed a merger order on 24.12.2010, by which "Aswini Projects Private Limited and Deepti Integrated Logistics Private Limited" the respondent/plaintiff herein called as Transferor Company merged with "Emgee Infrastructure Holdings (India) Private Limited" called as Transferee Company.

5.By the said order, the Andhra Pradesh High Court permitted the scheme of amalgamation. Pursuant to the order only the application for amendment to amend the cause title for substituting the new name of the respondent/plaintiff was filed under Order VI Rule 17 of Civil Procedure Code, so as to reflect the correct name of the respondent/plaintiff. The said application was contested by the appellants stating that the application is barred under Article 137 of the Limitation Act and the application under Order VI Rule 17 of Civil Procedure Code is not maintainable for adding or striking of parties and the only application that could be maintained is under Order I Rule 10 (1) of Civil Procedure Code. The said contentions were rejected and the application was allowed. The said order is being challenged in this Court.

6.Heard Mr.Magesh, learned counsel for the appellants, who would strenuously argue that when there is a specific provision under Order I Rule 10 (1) of Civil Procedure Code, to strike out or add parties, the same has to be invoked, whereas, the respondent/plaintiff invoked wrong provision under Order VI Rule 17, which speaks about amendment of pleadings. When there is a specific provision, the same has to be invoked, and that is the main contention of the learned counsel for the appellants. Further, he would submit that the proceedings of amalgamation was already initiated, when the suit was filed on 30.06.2010 and therefore, the plaintiff should have been careful enough to give the correct particulars, especially, the name of the plaintiff. Therefore, the order passed by the learned Single Judge has to be set aside.

7. However, Mr.Anirudh Krishnan, learned counsel for the respondent/plaintiff would support the order passed by the learned Single Judge.

8. Heard the parties and perused the records. It is evident from the pleadings that the Suit was filed by "M/s.Deepti Integrated Logistics Private Limited" for recovery of money against the appellants. The suit was filed on 30.06.2010. The necessity for amending the suit by the respondent/plaintiff arose because of the amalgamation order passed by the Andhra Pradesh High Court in C.P.Nos.79, 80 and 81 of 2010 dated

13.07.2010 and the subsequent order of merger passed on 24.12.2010.

9.A close scrutiny of the order passed by the Andhra Pradesh High Court would reveal that the transferor companies were "Aswini Projects Private Limited" and "Deepti Integrated Logistics Private Limited" who is the respondent/plaintiff herein and the transferee company was "Emgee Infrastructure Holdings (India) Private Limited". Permitting the scheme of amalgamation, the Andhra Pradesh High Court passed an order on 24.12.2010. By amalgamation, the name of the plaintiff company has become "Emgee Infrastructure Holdings (India) Private Limited," which is the transferee company before the Company Court.

10.It is a subsequent event after the filing of the Suit that took place on 13.07.2010, when the order of amalgamation was passed and on 24.12.2010, when the merger order was passed by the Andhra Pradesh High Court. When the Andhra Pradesh High Court passed an order, the same has to be respected and given effect.

11.As per the order, the nomenclature of the respondent company got changed and the original name was no more in existence. When such is the change, which is material, it should be brought to the notice of the Court and accordingly, the proceedings have to be amended and that has been rightly done by the respondent/plaintiff. If the respondent had not brought it to the notice of the Court and got amendment of the cause title, then it would defeat the rights of the respondent/plaintiff and it cannot continue with the proceedings itself as the original name of the company was changed and the company itself, was no more in existence.

12.With regard to Article 137 of the Limitation Act, it speaks about the period of three years, if no limitation is prescribed and it is about independent proceedings and it would not be applicable to the application taken out in the pending proceedings viz., interim applications. Therefore, the said contention relying upon Article 137 of Limitation Act, will not hold good.

13.The relevant provision for amending the cause title, according to the appellants is Order I Rule 10 (1), whereas the respondent invoked Order VI Rule 17 of Civil Procedure Code. First of all, the invocation of wrong provision cannot be fatal and this Court can always apply the correct provision of law. Order I Rule 10 (1) of Civil Procedure Code is usefully extracted as follows:

"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."

At the time of initial proceedings, the correct name was there viz., "Deepti Integrated Logistics Private Limited" and subsequent to the passing of the order by the Hon'ble High Court only, the name has been changed and therefore, it cannot be called as Suit in the name of wrong plaintiff. Therefore, the said contention is liable to be rejected. Even otherwise, as rightly pointed out by the learned Single Judge, the amendment of cause title is covered by Order VI Rule 17 of CPC and even cause title forms part of the pleadings. The said finding given by the learned single Judge is also appealing.

14.The respondent/plaintiff invoked Order VI Rule 17 for amendment of pleading. Order VI Rule 17 is extracted as follows: "17.Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

15.The plaint has to be read in toto and it cannot be dissected and different provisions of law should be applied. Even otherwise, as rightly pointed out by the learned Single Judge, the amendment of cause title itself is an amendment of pleading and therefore, the application is otherwise also maintainable.

16.Even if a wrong provision has been invoked, this Court has powers to invoke the correct provision in the interest of justice and pass appropriate orders. In that view also, the order passed by the learned Single Judge has to be upheld.

17.No prejudice will be caused to the appellants as the nature of suit has not been changed and cause of action is no way altered, whereas if the application is not allowed, the very purpose of filing the suit itself would be lost as the original plaintiff is no more in existence and it cannot be continued in old name and therefore, necessarily new nomenclature has to be incorporated by way of an application. Therefore, in the interest of justice, the learned single Judge has rightly allowed the application.

Accordingly, the Appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ay/sai

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

+1cc to Mr.G.Ilamurugan, Advocate Sr.61843
+1cc to Mr.Anirudhkrishnan, Advocate Sr.61854

O.S.A.No.294 of 2018

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