

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 9th DAY OF OCTOBER 2018

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

A.No.6455 of 2018

in

C.S.No.328 of 2017

1.Prem Kumar Menon
Casafina
No.5, Primrose Road,
Bangalore - 560 025

2.Kishore Kumar Menon
No.58, 100' Road,
2nd Block, Koramangala
Bangalore 560 034

3.Christopher Gladstone Menon
5564, East Danube
Fridley, Minnesota, 55432 (USA)
Represented by his power of attorney

:Applicants/Plaintiffs

Vs

1.BNP Paribas Global Securities Operations, Pvt.Ltd,
Centre Point II,8,Ekkaduthangal Road,
Thiru Vi Ka Industrial Plots,
Guindy,
Chennai - 600 032

2.Lancor Holdings Limited
Rep by its Managing Director,
Mr.R.V.Shekar
VTN Square
No.58, G.N.Chetty Road
T.Nagar, Chennai 600 017

: Respondents/Defendants

Application praying that this Hon'ble Court be pleased to set aside the *exparte* order dated 06.07.2018 in A.No.4151/2018 in CS No.328/2017

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

The application No.6455 of 2018 is filed to set aside the *exparte* order dated 06.07.2018 in Application No.4151 of 2018 in the above suit.

2. The Application No.4151 of 2018 is filed for deleting the name of the applicant/1st defendant from the array of suit. This Court, on 06.07.2018 allowed the application *exparte* as there was no representation on behalf of the plaintiff. Since the issues to be decided are interconnected both the applications: Application No.6455 of 2018 and Application No.4151 of 2018 are taken up together.

3. The learned Counsel appearing for the plaintiff would submit that the 2nd defendant and the plaintiff entered into a joint development agreement and accordingly each of the parties are entitled to 50% share in the property. Be that as it may, during the course of the transaction, 2nd defendant leased out the property to the first defendant. The plaintiff is maintaining the property and accountable for the receipt and expenditure. According to the plaintiff, the 1st

defendant who was a lessee at this relevant point of time availed the facilities, but failed to pay the maintenance charges on the pretext that it will be paid by the Lessor/2nd defendant. Hence the suit came to be filed claiming the maintenance charges from the 1st and 2nd defendants.

4. The 1st defendant/lessee taken a stand that there is a maintenance agreement between lessor and lessee. As per which the lessee namely the applicant/1st defendant is liable to pay all the maintenance charges only to the 2nd defendant. In turn the 2nd defendant will take care of maintenance. In the handing over and taking over agreement dated 31.08.2017, the lessor agreed to adjust the rent and maintenance payable by the lessee from and out of the Interest Free Refundable Security Deposit lying with the lessor, from April-2016 to November-2016. It is further agreed that the 2nd defendant shall indemnify the 1st defendant from and against the direct and indirect losses, damages, costs, expenses, claims, liabilities whatsoever including all the legal proceedings in the above suit C.S.No.328 of 2017 pending on the file of this Court.

5. Therefore, it is the contention of the learned counsel

for the 1st defendant that 1st defendant is not liable to pay the maintenance charges and it is the 2nd defendant, who is liable to pay the amount as claimed by the plaintiff. In view of the maintenance agreement between the 1st and 2nd defendants, 1st defendant has no privity of contract to pay the maintenance charges to the plaintiff. No relief also sought against him by the plaintiff. Therefore, he is not a necessary party and his name is liable to be deleted from the array of the suit.

6. Heard the rival submissions. Admittedly the building was in use and occupation of the 1st defendant during the disputed period viz., February-2016, March-2016 and between April-2016, November 2016. Admittedly, the 1st defendant has paid the electricity charges which is included in maintenance charges, to the plaintiff in order to facilitate his continuance in the premises. The 1st defendant has vacated the premises on 30.11.2016. As seen from the handing over and taking over agreement between 1st and 2nd defendants that the 2nd defendant indemnify the 1st defendant from paying all the costs, expenses, damages on his behalf. Even though, there is no privity of contract between the plaintiff and 1st

defendant, it is contended that the plaintiff is entitled to recover the same from the 1st defendant who availed the service. Admittedly the above said agreement dated 31.08.2017, came into existence only after the institution of the suit. The number of the suit is also mentioned therein. But the plaintiff is not a party to the same and he cannot place reliance on the agreement between the defendants. In such an event, it is the 1st defendant, who can throw some light on the issue as to who is liable to pay. Hence, for adjudicating the issue effectively the 1st defendant needs to be there. Whether the 1st defendant is liable to pay or not ? is a subject matter for trial. Even though, the 1st defendant cannot be a necessary party as there is no privity of contract between the plaintiff, he is a proper party who actually availed the services rendered by the plaintiff during the relevant period and made partial payment. The 1st defendant is entitled to set forth the defence in the written statement and work out his remedy in the manner known to law.

7. The Hon'ble Supreme Court in ***Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others*** reported in (2012) 8 SCC 384 has held that:-

41. Though there is apparent

conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

8. Since this Court is of the opinion that the 1st plaintiff is a proper party, whose presence will assist the

effective adjudication of the matter and the deletion of the name of the 1st defendant may prejudicially affect the plaintiff case, the Application to delete the name of the 1st defendant cannot be entertained.

9. Considering the same;

a). the Application to set aside the *exparte* order dated 06.07.2018 is A.No.4151 of 2018 in C.S.No.328 of 2017 is **Allowed.**

b). the Application to delete the name of the 1st defendant is dismissed on the above observations. Accordingly, the **Application No.4151 of 2018 is dismissed.**

Sd/.M.G.R.J

09.10.2018

//Certified to be a true copy//

Dated this the th day of 2018.

DL/22.10.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.