

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.782 of 2017

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 26.12.2016 passed in I.A.No.287 of 2016 in O.S.No.98 of 2012 by the I Additional District Judge, Nellore, whereby, the petition filed under Order 1 Rule 10 (2) read with Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioners herein are the plaintiffs before the trial Court. They filed suit for dissolution of partnership firm and for rendition of accounts of the firm without impleading the firm and the said defect is noticed later and filed a petition under Order 1 Rule 10 (2) of C.P.C. to implead the firm M/s Shambhavi Engineers, Nellore.

The trial Court dismissed the petition on the premise that the plaintiff is seeking declaration and referred to two judgments of this Court rendered in "**C.Pandit Rao and others v. Vishwakarma Association (Sangam), Secunderabad**¹" and "**V.Narayana Reddy v. Rani Narayanan**²".

Aggrieved by the order, the present revision is filed on various grounds while contending that the dismissal of application relying on two judgments (referred above) is an error appearing on the face of the record and filing of suit in contravention of Order

¹ 2004 (5) ALD 225

² 2009 (4) ALD 13

XXX of C.P.C. can be cured at any time and there is no limitation for filing suit for dissolution of partnership firm and rendition of accounts and requested to set aside the order passed by the trial Court and allow the application in I.A.No.287 of 2016 in O.S.No.98 of 2012.

During hearing, learned counsel for the petitioner reiterated the same grounds urged in the petition, whereas learned counsel for the respondents opposed the application on the ground of limitation as the application was filed after four (4) years from the date of filing of suit and requested to dismiss the revision.

It is an undisputed fact that the suit was filed by the petitioners against two defendants, who are partners of M/s. Shambhavi Engineers and for rendition of accounts of the firm for a particular period without impleading the firm as a party to the suit. According to Order XXX Rule 1 of C.P.C. any suit is filed by or against the firm, the firm must be a party, but the petitioners herein without impleading the firm as party filed the suit for various reliefs referred supra. There is dispute with regard to carrying business in the name and style "M/s Shambhavi Engineers" and the petitioners are partners. But firm was not impleaded as party to the suit due to inadvertence; such defect can be cured by exercising power under Order 1 Rule 10 (2) of Cr.P.C. if the Court records its satisfaction that the proposed party is proper or necessary party. In a suit for dissolution of partnership firm and rendition of accounts filed against the partners of the firm, in view of Order XXX of C.P.C. the firm must be a party though no relief is claimed against the firm. In the absence of firm,

the Court cannot pass a complete and effective decree. Therefore, the firm is a proper party though not necessary party.

The word 'proper and necessary party' is not defined in the Code of Civil Procedure. In "**Mumbai International Airport (P) Ltd. V Regency Convention Centre and Hotels (P) Ltd.**"³ the word 'proper and necessary party' defined as follows:

"A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

In Para No.13 of the same judgment, the Apex Court held as follows:

" The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary party".

In view of the above judgment of the Apex Court, the firm is a proper party, in whose absence the Court cannot adjudicate the real controversy effectively. But the trial Court did not consider the

³ 2010(7) SCC 417

necessity of impleading the proposed party as defendant in the suit and committed an error.

Learned counsel for the respondent contended that the petition was filed four years after institution of suit, thereby it is barred by limitation.

In fact, there is no limitation to file suit for dissolution of partnership firm. So far as rendition of accounts is concerned, such question of limitation can be decided with reference to Section 21 of Limitation Act. Therefore, limitation is not a ground to reject the relief when the Court finds that the firm is a proper party to the suit.

In view of my foregoing discussion in the earlier paragraphs, the order passed by the Court below is liable to be set aside.

In the result, the revision is allowed setting aside the order dated 26.12.2016 passed in I.A.No.287 of 2016 in O.S.No.98 of 2012 by the I Additional District Judge, Nellore. The I.A.No.287 of 2016 in O.S.No.98 of 2012 is hereby allowed subject to Section 21 of the Limitation Act. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

15.11.2018
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