

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4341 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, questioning the order passed in IASR No.2465 of 2017 in R.A.No.196 of 2015 dated 18.07.2017 passed by the Chief Judge, City Small Causes Court at Hyderabad, rejecting IASR No.2465 of 2017 at the threshold, filed under Order I Rule 10 C.P.C.

The respondent filed R.A.No.196 of 2015 under Section 20 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'Act'), for eviction of the original tenant in occupation of the property and the eviction order was passed by the Rent Controller, which is under challenge. R.A.No.196 of 2015 is pending under Section 20 of the Rent Control Act and IASR No.2465 of 2017 is pending before the Chief Judge, Small Causes Court at Hyderabad, since 2015 and the present civil revision petition is filed in the year 2017, almost after lapse of two years, claiming that the tenant is a partnership firm and the partnership business is carried on in the premises and therefore, he is proper and necessary party to the Rent Control proceedings and without impleading him, eviction cannot be ordered.

It is the consistent case of the respondent from the beginning that the first respondent-Md. Baderuddin was the tenant in occupation of the premises having obtained premises on lease and eviction petition was filed only against the said

Md. Baderuddin to evict him. Therefore, an eviction order was obtained from the Rent Controller on various grounds and now the order is assailed before the District Court by the tenant in occupation. But, the third party, the petitioner herein intended to come on record as partner of the business, which is being carried on in the premises. The basis for the claim is the income tax returns filed by the partnership firm which is in occupation of the premises. The eviction petition was got filed by the landlord against the tenant on the grounds available under the Act against a tenant.

The word 'tenant' is defined under Section 2(ix) of the Act as follows:

"tenant' means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, of a deceased tenant who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant, etc."

The petitioner is claiming to be a partner of the business being carried on by the first respondent in the demised premises. the first respondent is the sole tenant in occupation, but not the alleged partnership firm. Though the business belongs to the partnership firm, the premises was obtained on lease by the first respondent alone. Therefore, the petitioner who is claiming to be a partner in the business is not a proper and necessary party and unless, he *prima facie* proves that there is a subsisting relationship between them as landlord and tenant, he cannot be impleaded as a

respondent party at this stage, when the appeal is pending after ordering eviction by the Rent Controller.

Under Order I Rule 8 Clause (2) C.P.C is a person, in whose absence an order cannot be passed effectively and according to it, the Court shall, in every case where a permission or direction is given under Sub-Rule (1), at the plaintiff expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

The Apex Court in **Razia Begum v. Sahebzadi Anwar Begum & others**¹ discussed the scope of Order I Rule 10(2) of C.P.C and held that the interest which the proposed party shall have in the suit to enable him to be impleaded therein, should be direct interest and not a commercial interest.

Similarly, in re, Ibrahim Haji, , Ramaswami J. held as follows:--

"Order 1, Rule 10(2), Civil P. C., confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under O. 1, R. 1, or R. 3, Civil P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit if persons who are sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence, and it would not be proper to make them parties to the suit and that the petitioner apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit."

¹ 1958 AIR 886

Later, the Madras High Court in Firm of **Mahadeva Rice and Oil Mills v. Chennimalai Gounder**² laid down the following principle:

"I am of the opinion that the following tests may be formulated usefully as a guidance in the case of adding of parties under O. 1, R. 10, Civil P. C.:

(1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

(2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;

(3) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

(4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

(5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit."

In **Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee**³, the Madras High Court considered the right of a third party to claim addition of party. It was held as follows:-

"(iii). The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to given on some of the questions involved, but it should make him as necessary witness.

(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the

² AIR 1968 Mad 287

³ 2004(2) C.T.C. 183

structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v). The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.

(vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are jeopardized by the persons already on record”

In **Mumbai International Airport vs., Regency convention**

Centre⁴ the Apex Court gave some illustrations regarding exercise of discretion for adding of parties as follows:-

“1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes

⁴ AIR 2010 SC 3109

an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.”

In view of the guidelines referred supra in the decisions, it is abundantly clear that, when a person has got interest directly in the property, he is entitled to come on record, if his rights are being effected on account of passing decree in the pending suit.

In view of the law declared by the Apex Court and Madras High Court, referred supra, the petitioner is neither proper nor necessary party, since the firm is not a tenant who obtained permission on lease from the landlord/third respondent herein and unless there is a direct relationship of landlord and tenant between the firm and the first respondent herein, the petitioner who is claimed to be a partner in the business cannot be brought on record, in view of the limited scope in the Rent Control Act. Therefore, I find absolutely no material to conclude *prima facie* that the petitioner is neither a proper nor a necessary party to the proceedings. Hence, the petitioner cannot be impleaded as a party at this stage in R.A.No.196 of 2015. Consequently, the order passed by the Court below in IASR No.2465 of 2017 in R.A.No.196 of 2015 is free from any illegality, warranting interference of this Court either under Article 227 of the Constitution of India or under Section 22 of the Rent Control Act.

In the result, the civil revision petition is dismissed, affirming the order passed by the Court below in IASR No.2465 of 2017 in R.A.No.196 of 2015.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.03.2018

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