

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3285 of 2018

ORDER:

The newly added 9th defendant is M/s. Lathur Solvent Extractions Private Limited maintained the revision impugning the order in IA.No.197 of 2017 in OS.No.218 of 2015 dated 29.12.2017 of the I Additional District Judge, Nellore, allowing the petition by amendment of the pleadings for impleadment of the 9th defendant supra in the suit filed by sole plaintiff M/s. Sree Aquatics, Propriety Entity of DCS Reddy against 2 defendants viz., M/s. Rasex Trades represented by its 6 partners and M/s. Gowri Agro Tech Products Private Limited represented by its Director SSN Manthri. The suit filed is for recovery of the amount. The two defendants are contesting the suit.

The implead petition affidavit speaks that the suit filed is for recovery of Rs.1,57,73,699/- against the two defendants and in the written statement of 1st defendant it is mentioned as the partners referred of it in the plaint are its employees. The proposed respondent Nos.3 to 8 as per the plaintiffs enquiry came to know of 1st and 2nd defendants firms partners who are also necessary parties to the suit and that the proposed 9th defendant is also proper and necessary party to the suit because he made a demand to the plaintiff to pay amount for raw material supplied by him on the instructions of the 1st defendant.

The proposed 9th defendant filed counter in opposing the petition saying 9th defendant already filed suit Spl.C.S.No.58 of 2016 for damages and interest against Rasex Trades, Lathur and there was a compromise taken place between the plaintiff and proposed 9th defendant. It is the order placed through 1st defendant time to time in October 2013 stock worth Rs.1,64,13,625/- covered by 25 bills supplied and in the bail application No.131 of 2016 before the Sessions Court, Lathur, settlement arrived to pay the amount in installments, the plaintiff is not entitled to recover any amount covered by the suit claim against the proposed 9th defendant for any transaction between the plaintiff and defendant Nos.1 & 2 it is nothing to do by proposed 9th defendant and if at all the plaintiff wants to prove anything against defendant Nos.1 & 2 through the proposed 9th defendant at best to call as witness by adopting the procedure as per law and not to add as co-defendant for neither necessary nor proper party. The application was allowed by the impugned order dated 29.12.2017 by the trial Court with the observations that in the suit for recovery filed by the plaintiff against 2 defendants as per the plaint averments plaintiff placed order for supply of aqua feed supplements material and on the instructions of the 1st defendant, plaintiff paid amounts to the 2nd defendant for the stock to be supplied and it is the 9th defendant in fact that supplied the stock and issued notice to the plaintiff demanding for the

amount though plaintiff paid the amount to the 2nd defendant for no direct contract between the plaintiff and the proposed 9th defendant for what 9th defendant supplied to the plaintiff is through defendant Nos.1 & 2 and thereby to avoid multiplicity of proceedings 9th defendant is necessary party besides defendant Nos.3 to 8 Directors of defendant Nos.1 & 2. The trial Court observed is that it is to avoid multiplicity of proceedings they are necessary or at least proper parties to the suit.

The contentions in the revision are that the lower Court did not properly apply the position of law in impleading the 9th defendant despite counter contest of neither necessary nor proper party and the impugned order is basically unsustainable for nothing to fasten any liability in the suit against proposed 9th defendant.

The plaintiff supported the order of the lower Court.

Heard both sides and perused the material on record.

In fact from the core of the contest what the plaintiff placed the order to the 1st defendant and at his instance given the amount for supply of stock to the 2nd defendant whereas it is the 2nd defendant that has to pay the amount to 9th defendant from whom the stock secured to the plaintiff and the 9th defendant made independent claim against the plaintiff for that amount, thereby defendant Nos.1 & 2 have to pay and there is no double payment liability for the defendants put together.

In fact it is covered by order 8A CPC AP amendment as to the third party procedure which shows in nutshell which came into force with effect from Madras amended Act No.26/1968 of 05.09.1968 same applies to AP which says as by Madras High Court that where a defendant claims to be entitled to contribution from or indemnity against any person not party to the suit with leave of the Court said defendant issue notice to the said third party through seal of the Court to serve by mentioning therein grounds of the claim and to file such notice before Court with copy of plaint to serve to the third party who shall on service be deemed to be a party to action with the same rights in respect of his defence against any claim made against him for otherwise if he had been duly sued in the ordinary way by the defendant and if such third party desires to dispute the suit claim of the plaintiff as against the defendants and whose behalf notice given and or his own liability to the defendants, the third party shall enter appearance to the suit and if he failed to enter appearance it is deemed admitted validity of the decree that may be obtained against such proposed party whether by consent or otherwise to contribute or indemnify to the extent claimed in the third party notice and if the third party enters appearance the Court may if satisfies there is question to be tried as to liability of the third party also for any contribution or to indemnify in whole or part of suit claim to be tried in the suit and by granting leave to defendant. No doubt the third party

procedure is to be invoked is by co-defendant to the suit and not by plaintiff from the very wording supra. Here it is the claim of the plaintiff saying whatever the stocks supplied by 9th defendant are at the instance of defendant Nos.1 & 2 to whom plaintiff paid and placed the order and thereby 9th defendant is a necessary party to decide the dispute.

Once such is the case, the proposed party is not mere property party, but also necessary party to the suit for the complete and effective adjudication of the entire lis inter se. Once such is the case, there is nothing to interfere with the impugned order, but for to say it will not prejudice any of the available defence of the proposed defendant impleaded as 9th defendant to raise all pleas by filing written statement.

With these observations, this Civil Revision Petition is dismissed.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 24.07.2018
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