IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

CRP (PD) No.2210 of 2013 and
M.P.No.1 of 2013

M.Dasarathkumar Bhoot ... Petitioner

Vs.

1. State Bank of India,
   A body corporate constituted under the
   State Bank of India Act, (23 of 1995), having
   its head office at Bombay and amongst them,
   a branch at B.P.Agraharam, Erode,
   rep. by its Branch Manager,
   Erode Town Branch.

2. Future General India Insurance Co Ltd.,
   Corporate Office 001,
   Trade Plaza, Ground Floor,
   414, Veer Savarkar Marg,
   Prabhadevi, Mumbai.

3. Future General India Insurance Co., Ltd.,
   Branch office at 1st floor, Northwing,
   Karumuthunilayam, 192, Anna Salai,
   Chennai. .... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 12.03.2013 passed in I.A.No.531 of 2012 in O.S.No.386 of 2011 by the I Additional Subordinate Judge, Erode.

For Petitioner : Mr.V.S.Kesavan

For Respondents : Mr.Elayaraj Kumar
for M/s Ramalingam & Associates (for R1)
Mr.N.Vijayaraghavan (for R2 and R3)

ORDER

The civil revision petitioner is the defendant in O.S.No.386 of 2011 on the file of the I Additional Subordinate Judge, Erode.

2. The first respondent/plaintiff filed the suit in O.S.No.386 of 2011 for recovery of a sum of Rs.1,99,387.77 together with interest at the rate of 13.75% per annum from the revision petitioner/defendant. The present revision petitioner/ defendant filed his written statement and both the parties went for trial. Subsequently, the revision petitioner filed a petition under Order I Rule 10(2) and Section 151 of the Code of Civil Procedure to implead 1) Future General India Insurance Company Limited, corporate office 001, Trade Plaza, Ground Floor, 414, Veer Savarkar Marg, Prabhadevi, Mumbai and 2) Future General India Insurance Co. Ltd., Branch Office at 1st floor, North wing, Karumuthu Nilayam, 192, Anna Salai, Chennai as defendants in the suit. The first respondent/plaintiff filed their counter and after full contest, the learned I Additional Subordinate Judge, Erode dismissed the petition vide his fair and decreetal orders dated

13.03.2013, on the ground that since there is no privity of contract between the first respondent and the insurance company, the proposed parties are not proper and necessary parties to the suit. Aggrieved over the same, the present civil revision petition is filed.

3. Mr. V.S.Kesavan, learned counsel appearing for the civil revision petitioner contended that since the insurance company paid a sum of Rs.2,39,500/- and the remaining loan amount should be paid by the petitioner, in the instant case, the presence of the respondents 2 and 3 are absolutely necessary for a just decision.

4. Mr.Elayaraj Kumar, learned counsel appearing for the respondent contended that since the petitioner borrowed a loan of Rs.3,40,000/- from the first respondent for purchase of a new Tata Indica Car and the petitioner had already made a claim with the insurance company, the first respondent has filed the suit against the revision petitioner for the remaining loan amount due and payable by him and therefore, the respondents 2 and 3 are not proper and necessary parties to the suit.

5. A perusal of the records shows that the petitioner had availed a loan of Rs.3,40,000/- from the first respondent/plaintiff to purchase a Tata Indica Car. The proposed parties are the insurer of the car. It is contended that the car was stolen from the custody of the revision petitioner and it could not also be traced out. Therefore, the revision petitioner made a claim with the insurance company and the insurer paid a sum of Rs.2,39,500/- to the credit of the first respondent/ State Bank of India. Thereafter, the bank filed the suit for recovering the balance amount due and payable by the revision petitioner. The insurer has already paid a sum of Rs.2,39,500/- to the plaintiff bank and therefore, the remaining amount has got to be paid by the revision petitioner. Since there is no privity of contract between the plaintiff/ State Bank of India and the insurance company, the insurance company cannot be said to be a proper and necessary party to the suit filed by the bank for recovering the loan availed by the revision petitioner. Hence, I do not find any reason to interfere with the findings recorded by the learned I Additional Subordinate Judge, Erode. However, the learned counsel appearing for the revision petitioner contended that the revision petitioner must be given liberty to examine the insurance company on his side. The revision petitioner can examine any person as a witness relevant to the matter in issue and a liberty need not be granted by this court seperately.

6. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) Since the suit is of the year 2011, the I Additional Subordinate Judge, Erode is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order, after affording opportunities to both the parties.

13.08.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

1. The I Additional Subordinate Judge, Erode.

R.HEMALATHA,J.
mst

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