HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

CIVIL REVISION PETITION NO.496 OF 2019

ORDER
(Per Sanjay Kumar, J)

1. The petitioner in this revision, filed under Article 227 of the Constitution, is the second defendant in COS No.16 of 2018 on the file of the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (*for brevity*, 'the Commercial Court'). He filed I.A.No.575 of 2018 therein under Order 1 Rule 10(2) CPC praying that his name should be struck off both as the second defendant as well as the representative of the first defendant company in the suit. By order dated 24.12.2018, the Commercial Court dismissed the I.A. Aggrieved thereby, he is now before this Court.

2. Heard Sri Amancharla V.Gopala Rao, learned counsel for the petitioner-second defendant, and Sri P.S.Rajasekhar, learned counsel for the first respondent-plaintiff in COS No.16 of 2018.

3. Parties shall hereinafter be referred to as arrayed in the suit.

4. COS No.16 of 2018 was filed for recovery of a sum of Rs.1,25,67,819/- along with interest from the defendants. The case of the plaintiff society was as follows: It had appointed the third defendant as its broker for marketing and sale of palm oil. The third defendant arranged for sale of palm oil to the first and second defendants. The plaintiff society supplied 546.26 metric tonnes of palm oil of the value of Rs.2,46,53,399/- to them in August and September, 2014. In part-payment, cheques were issued by the first and second defendants to the tune of Rs.90,77,412/-. However, the cheques were dishonoured upon presentation due to insufficiency of funds. Criminal prosecution was also launched against the

first and second defendants in this regard under Section 138 of the Negotiable Instruments Act, 1881. The amount due under the cheques along with interest was sought to be recovered by way of the suit.

5. While so, the second defendant filed the subject I.A. claiming that he was not a Director of the first defendant company as on the date of filing of the suit. He stated that the first defendant company had approached the National Company Law Tribunal, Hyderabad (NCLT), by initiating a corporate insolvency resolution process, *vide* CP (IB) No.23/10/HDB/2017. According to him, the said application was disposed of, *vide* order dated 10.10.2017, appointing a Liquidator and the powers of the Board of Directors and key managerial personnel stood vested in the said Liquidator. It is on this basis that he claimed that he was not a proper party and that no useful purpose would be served by arraying him as the second defendant and as the representative of the first defendant company in the suit. He accordingly prayed for striking off his name in both capacities from the array of parties.

6. The plaintiff society contested this plea by filing its counter. Therein, its Deputy Manager and authorised representative denied that the second defendant was not a Director of the first defendant company as on the date of filing of the suit and put him to strict proof of the same. He also denied the claims as to the proceedings before the NCLT for want of knowledge and pointed out that the plaintiff society was not a party to the said proceedings. He further pointed out that no mention was made of the plaintiff society in the order dated 10.10.2017 relied upon by the second defendant. He asserted that the case on hand was a fit case for lifting the corporate veil as the second defendant was responsible for the day to day affairs of the first defendant company and had admitted and

acknowledged the debt due to the plaintiff society. He also pointed out that the learned XIV Special Magistrate, Erramanzil, Hyderabad, had convicted the second defendant and sentenced him to imprisonment in the cheque bounce case. He accordingly prayed for dismissal of the I.A.

7. Dealing with these rival contentions, the Commercial Court took note of the fact that the suit was filed on the strength of a cause of action which had arisen in September and October, 2014, at which point of time, the second defendant was the Managing Director of the first defendant company and would be liable to account for such past transactions. The Commercial Court concluded that even if a Liquidator was appointed by the NCLT, *vide* its order dated 10.10.2017, the suit was maintainable against the second defendant as the liability *inter se* the first defendant company and the second defendant could only be decided after full trial. Holding so, the Commercial Court dismissed the I.A.

8. Sri Amancharla V.Gopala Rao, learned counsel, would state that a moratorium order was passed by the NCLT under Section 14 of the Insolvency and Bankruptcy Code, 2016 (*for brevity*, 'the Code of 2016'), and therefore, the suit proceedings cannot go on in any event. He would assert that this is a fit case for this Court to grant interim relief and afford a detailed hearing to the parties.

9. On the other hand, Sri P.S.Rajasekhar, learned counsel, would point out that in terms of the *proviso* to Section 14(4) of the Code of 2016, a moratorium ceases to have effect when an order for liquidation of the corporate debtor is passed. As the NCLT already passed the liquidation order on 10.10.2017, learned counsel would contend that the argument to the contrary has no legs to stand upon. He would further point out that though the second defendant claimed to have ceased to be a Director of

the first defendant company, he continued on its payrolls as its Chief Executive Officer. He would assert that the attendance sheet for the creditors meeting of the first defendant company held on 21.04.2017 placed on record bears out this fact.

10. We may first note that the power of the Court to strike out a party under Order 1 Rule 10(2) CPC arises only when the Court opines that such a party is improperly joined. Having given due consideration to the facts and the arguments, we find that certain crucial and inescapable facts weigh heavily against the second defendant in this regard. It is an admitted fact that the second defendant was convicted by the competent criminal Court in relation to the cheque bounce case which is intrinsically linked to the suit claim. He was admittedly the Managing Director of the first defendant company at the relevant point of time and has personal knowledge of the transactions which form the basis for the suit. He therefore cannot seek to be released from the array of the parties even if it is true that he ceased to be a Director of the first defendant company thereafter. We may also note that the plaintiff society asserts that this is a fit case for piercing the corporate veil and that the second defendant should be held personally liable. Further, the dual capacity in which the second defendant functioned in the first defendant company, as he seems to have continued as its Chief Executive Officer after ceasing to be a Director, requires further examination. We are therefore of the opinion that the second defendant must necessarily await the conclusion of the suit proceedings before he can assert any exemption from liability.

11. On the above analysis, we find that it would be wholly premature at this stage to give a clean chit to the second defendant and permit him to exit from the suit proceedings on the ground that he is not a proper

and necessary party. His role in the affairs of the first defendant company requires to be examined in the context of the plaintiff society's claim that he would be personally liable and therefore, he would be a proper and necessary party to the suit as the said issue can be decided only after a full-fledged trial. We find no error having been committed by the Commercial Court in holding to this effect.

12. The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

14th AUGUST, 2019

PGS