IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.12.2020

PRONOUNCED ON: 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos. 2735 to 2740 of 2020
IN
C.S.No. 226 of 2020

A.No. 2735 of 2020:

1. Ravi Rai
2. Mr.Ritesh Rai ... Applicants/Defendants 2 & 4

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10 of the Code of Civil Procedure, to strike out the names of the applicants herein from the array of defendants in the above suit C.S.No. 226 of 2020.

A.No. 2736 of 2020:

Rupal Rai ... Applicant/3rd Defendant

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10(2) of the Code of Civil Procedure, to strike out the name of the 3rd defendant in the above suit.

A.No. 2737 of 2020:

Joseph Philips ... Applicants/ 7th Defendant

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10(2) of the Code of Civil Procedure, to strike out the name of the 7th defendant in the above suit.

A.No. 2738 of 2020:

Sanjana Rai ... Applicant/ 6th Defendant

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10(2) of the Code of Civil Procedure, to strike out the name of the 6th Defendant in the above suit.

A.No. 2739 of 2020:

Cove Holdings Private Limited
Represented by its Director
Rupal Rai
Having Registered Office at
No.5, Ethiraj Lane,
Egmore, Chennai – 600 008. ... Applicant/ 8th Defendant

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10(2) of the Code of Civil Procedure, to strike out the name of the 8th Defendant in the above suit.

A.No. 2740 of 2020:

Ritika Rai Reddy ... Applicant/ 5th Defendant

Vs.

M/s. Radha Industries Pvt. Ltd.,
Represented by its Authorised Signatory
Mr.Yashpal Sharma
N.18/39, Sembudoss Street
Chennai – 600 001. ... Respondent/Plaintiff

This application filed under Order XIV Rule 8 of O.S Rules read with Order I Rule 10(2) of the Code of Civil Procedure, to strike out the name of the 5th Defendant in the above suit.

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For Applicant in A.Nos.2736 to 2740/2020 : Mr.P.S.Raman
Senior Counsel for
Mr.B.Aravind Srevatsa

For Applicants in A.No.2735/2020 : Mr.S.R.Ragunathan

For Respondent/plaintiff: Mr.A.Abdul Hameed for
M/s. AAV Partners

COMMON ORDER

Applications have been filed under Order 1 Rule 10(2) of the Code of Civil Procedure seeking to strike out the name of the respective applicants/defendants as parties to the suit.

2. A.No. 2735 of 2020 has been filed by the second and fourth defendants. A.No. 2736 of 2020 has been filed by the third defendant. A.No. 2737 of 2020 had been filed by the seventh defendant. A.No. 2738 of 2020 has been filed by the sixth defendant. A.No.2739 of 2020 has been filed by the eighth defendant. A.No. 2740 of 2020 has been filed by the fifth defendant.

3. The reasons seeking to strike out the applicants as defendants in the suit are the same. Hence, a common order is passed.

4. In the affidavits filed in support of the said applications, it had been uniformly stated that the suit is bad for misjoinder of parties. It had been stated that the plaintiff had unnecessarily made the applicants as party/defendants to the suit. It had been stated that a reading of the plaint would clearly show that there was no cause of action as against the applicants. It was also stated that the averments contained in the plaint taken as it is do not disclose any cause of action against the applicants. It was further stated that the applicants are neither proper nor necessary parties. It had been further stated that the applicants have been arrayed as defendants in their personal capacity. It had been therefore stated that the applicants may be struck out as party defendants in the suit.

5. Counter affidavits have been filed on behalf of the plaintiff. It had been stated that the applicants are necessary and proper parties to the suit and that cause of action subsists against the applicants. It had also been stated that necessary averments have been made out in the plaint. It had been stated that the provisions for striking out pleadings under Order 1 Rule 10(2) CPC would not apply to the present applicants and that the applications are liable to be dismissed.

6. In order to determine the actual issues raised, it would be necessary to examine the averments made in the plaint with particular reference to the averments as against the present applicants/defendants.

7. The suit had been filed by M/s. Radha Industries Private Limited, a Government of India, recognised 'Trading House' carrying on business of trading in Iron Ore, Coal, Melting Scrap and other Steel products. The first defendant M/s. RKKR Holdings Private Limited is a company incorporated under the provisions of the Companies Act 1956 and is also engaged in trading in Iron and Steel. The second to seventh defendants are Directors of the first defendant. The eighth defendants M/s. Cove Holdings Pvt. Ltd., is also a company incorporated under the provisions of the Companies Act 1956 and is also engaged in trading in Iron and Steel and had been promoted by the second and fourth defendants. It is stated that as on date, the third, fifth and sixth defendants are the Directors. The second to sixth defendants are close family relatives. The seventh defendant is said to be a family friend and business associate. It had been stated that the second to seventh defendants are Directors of various other companies. The plaintiff had business transactions for several years with the said companies through the second to seventh defendants. It had been stated that the second to seventh defendants requested the plaintiffs to provide advance towards supply of iron and steel products in the name of the first defendant. In paragraph 11 of the plaint, it had been stated as follows:-

*"**11.** The plaintiff submits that, in terms thereof, the plaintiff had paid a sum of Rs.3,11,00,000/- to the defendants 2 to 7 on various dates to the 1st defendant in the following manner, on the basis of promises held by the defendants 2 to 7 to supply Iron and Steel at every point of time, when payments were advanced by the plaintiff in course of time;*

S.No.	Date	Amount	Payment mode
01.	15.12.14	95,00,000	Cheque No. 310968 drawn on IDBI BANK
02.	15.12.14	30,00,000	Cheque No. 310972 drawn on IDBI BANK
03.	15.12.14	50,00,000	Cheque No. 685917 drawn on IDBI BANK
04.	27.01.17	34,00,000	Cheque No. 402890 drawn on IDBI BANK
05.	02.02.17	30,00,000	Cheque No. 402897 drawn on IDBI BANK
06.	02.08.17	17,00,000	Cheque No. 017950 drawn on IDBI BANK
07.	21.09.17	50,00,000	Cheque No. 017579 drawn on IDBI BANK
08.	22.09.17	5,00,000	Cheque No. 017581 drawn on IDBI BANK

8. It had been further stated that the second to seventh defendants through the first defendant neither supplied the materials nor refunded the advance amount. After much persuasion, the first defendant repaid a sum of Rs.1,07,60,412/- on various dates. The plaintiff had also given a police complaint with respect to the transactions between the group company of the plaintiff and another group company of the first defendant and FIR No. 184 of 2018 had been registered against the second to fifth defendants. It had been further stated that a settlement had been proposed and a settlement agreement was also entered into on 11.06.2018. However, since the defendants did not come forward to finalise the accounts and settle the outstanding dues, the suit had been filed seeking a Judgment and Decree against the defendants for a sum of Rs.3,29,81,061/- as on 29.02.2020 together with interest at 18% p.a., from the date of plaint till the date of payment and also for costs of the suit.

9. In paragraph No.23 of the plaint, it had also been stated that the monies given by the plaintiff to the second to seventh defendants through the first defendant was diverted and siphoned off by the second to seventh defendants to settle their personal liabilities, to buy properties in their names and in the names of their group companies and in the names of the family members and in the name of the eighth defendant. It had been further stated that the corporate veil of the first and eighth defendants should be lifted and it would then be possible to determine the acts of the second to seventh defendants.

10. An analysis of the facts as stated in the plaint would indicate that the plaintiff, a company trading in iron ore and steel had advanced monies to the first defendant for supply of iron ore and steel. It was however stated in the plaint that the monies were paid to the first defendant not after the supply of iron ore and steel but prior to supply as advance amount. This was paid to the first defendant since the second to seventh defendants had insisted on advance payment. The plaintiff has therefore stated that the monies paid to the first defendant as advance for supply of iron ore and steel, have been diverted and siphoned off by the second to seventh defendants for their personal use. The iron ore and steel have not been supplied by the first defendant.

11. A further analysis of the above facts would indicate that the plaintiff had paid monies to the first defendant at the behest of the second to seventh defendants and that the monies were thereafter secreted away by the second to seventh defendants.

12. The averment that the second to seventh defendants had asked the plaintiff to make payments to the first defendant and the further averment that the monies thereafter flowed away from the first defendant to the second to seventh defendants are statements alone. No documents have been filed to substantiate them.

13. To establish that averment the first defendant is a necessary party. Even if it is to be presumed that the monies had been transferred or taken away by the second to seventh defendants, the direct privity of contract with respect to payment of money was only between the plaintiff and the first defendant. The plaintiff can always call upon the first defendant to repay the amounts paid. It is seen that the amounts were paid through bank transfer. The plaintiff can hopefully make out a case of transfer of amounts from the plaintiff to the first defendant. The second to seventh defendants are Directors of the first defendant. It is surprising that the plaintiff has not produced any documentary evidence which would indicate either the request by the second to seventh defendants to transfer money to the first defendant or the subsequent transfer by the first defendant to the second to seventh defendant.

14. It is seen that the plaintiff had advanced, as seen in the tabular column extracted above, huge sums of money through bank transfer to the first defendant. The averment that these transfers were made only on the basis of request by the second to seventh defendants is an averment made in the plaint but documents have not be entitled to substantiate the same. It may not be proper on the part of this Court to examine the financial transactions as between the plaintiff and the first defendant in the absence of evidence adduced by the parties. However, I am not able to comprehend how the second to seventh defendants could be brought in a transaction entirely between the plaintiff and the first defendant. They are both companies and independent legal entities.

15. A suit can be filed against the first defendant/company and amounts can be recovered from the first defendant/company.

16. The apprehension of the plaintiff that the first defendant would turn out to be a shell company cannot be appreciated at this stage. The plaintiff, if they had such a apprehension should have been more diligent while transferring the above sums to the first defendant in the first place. Having transferred those sums, they can only call upon the first defendant to pay back the sum. The the plaintiff cannot seek to build a chain to link the Directors in their personal capacities in transactions for which the first defendant alone is directly answerable.

17. Order 1 Rule 3 CPC is as follows:-

*“**Rule 3 Order I of Code of Civil Procedure 1908 "Who may be joined as defendants"***

All persons may be joined in one suit as defendants where-

***(a)** any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is **alleged to exist against such persons**, whether jointly, severally or in the alternative; and*

***(b)** if separate suits were brought against such persons, any common question of law or fact would arise.”*

[Emphasis supplied]

18. A perusal of the averments in the plaint shows that there has been only one series of transactions as between the plaintiff and the first defendant. Therefore, the plaintiff has a cause of action as against the first defendant. The fact in issue would be whether the plaintiff actually transferred monies to the first defendant. For recovery of the said amount from the first defendant, establishment of that fact would be more than sufficient.

19. The learned counsel for the plaintiff however looked further ahead. The learned counsel insisted that the rights of the plaintiff should be protected till the realisation of the amount which would also include execution proceedings. With that intention, the second to seventh defendants have also been impleaded as defendants. But the personal liability of a Director to the acts of commissions and omission by a company is very limited. A Director cannot be held to be personally liable for any act impugned against the company. The assets of a company can be proceeded against.

20. The learned counsel for the plaintiff relied on the order of a learned Single Judge of the Delhi High Court ***dated 31.10.2014 in I.A.Nos. 16903 to 16906 of 2020 in C.S.(O.S.)No. 2205 of 2010, K.K.Modi Investment & Financial Services Pvt. Ltd., Vs. Apollo International Inc. & Ors.,*** and drew the attention of the Court to the observations therein that the Corporate veil could be lifted and if lifted necessary consequences as per averment in the plaint would follow. In that case also, applications had been filed under Order 1 Rule 10(2) CPC to delete the applicants/defendants as parties and also under Order 7 Rule 11 CPC to reject the plaint.

21. The facts in that case that the first defendant, in pursuance of a Master Agreement and with the object of offering education programmes in India had entered into a Shareholders Agreement with the plaintiff for creation of a joint venture company for providing the educational offerings of the second defendant and its subsidiaries in India. In pursuant to that agreement, the ninth defendant was incorporated. The plaintiff held 54.1% of the total equity shares. The relationship among the defendants was quite complex. The third and fourth defendants are body corporates constituted under the laws of the State of Arizona, USA. The seventh defendant was the Vice President of the second defendant. The eighth defendant was also a company incorporated by the second defendant. The first defendant and the eighth defendants were stated to have identical objects. As pointed out, pursuant to the agreement between the plaintiff and the first defendant, the ninth defendant had been incorporated. The plaintiff however claimed that each one of the defendants were bound by the Shareholders Agreement. It had been stated that there was economic unity between the first and second defendants. It was further stated that the fifth to seventh defendants were directly or indirectly controlling the first to fourth and eighth defendants. It was therefore contended that the first to eighth defendants had unity of interest and common business goals. When presented with a plaint containing such a myriad of facts indicating complex inter relationships between the defendants, the Delhi High Court held that the Corporate veil should be pierced to find out whether the inter relationships as stated were correct or not.

22. In the instant case, there is no such complex relationship among the parties. The second to seventh defendants are Directors of the first defendant. Piercing the Corporate veil would only indicate the said fact. The Corporate veil need not be pierced to determine that fact. The plaintiff will have to establish the facts which have been stated on presumptions and assumptions or atleast on facts to the exclusive knowledge of the plaintiff. There are no documents to substantiate these averments. Therefore, the facts in the case cited are totally distinguishable from the facts of the present case.

23. The learned counsel for the plaintiff also relied on ***(1995) 1 SCC 478 [New Horizons Limited and Another Vs. Union of India and Others]***. The learned counsel pointed out that the Hon'ble Supreme Court had held that the Court can see through the Corporate veil to ascertain the nature of a company. It was stated that this should be invoked when the Corporate personality is found to be opposed to justice, continence or interest of revenue.

24. In the instant case, the facts are distinguishable. It is a direct transactions between the plaintiff and the first defendant. The plaintiff has complicated the said transactions by imputing and linking the second to eighth defendants. Presumably, the only reason it is done is to seek attachment of the properties of the second to eighth defendants for securing the loan advanced to the first defendant.

25. The issue of piercing the Corporate veil does not arise since it is an admitted fact that the second to seventh defendants are either directly or indirectly connected with the first defendant and with the eighth defendant.

26. The learned counsel for the plaintiff also relied on ***1996 (4) SCC 622 [Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd., and Another].*** That was a case where a complaint was made against the company of defrauding others in deliberate disobedience of the orders of the Hon'ble Supreme Court. In contempt proceedings, the Hon'ble Supreme Court granted relief to the parties aggrieved in order to do complete justice. To lift the Corporate veil, directions were issued against the real contemnors hiding behind the shield of the company. It is to be pointed out that in the present case, issues have not been framed and no orders have been passed against the first defendant warranting such a drastic action.

27. The learned counsel for the plaintiff also relied the Judgment of the Madras High Court ***dated 25.06.2008 in A.S.No. 687 of 1998 [M/s. Sihnar Estate Builders (P) Ltd., and another Vs. B.Nataraj],*** wherein in a First Appeal, a learned Single Judge examined a decree passed against the appellants/defendants and whether the second defendant/Director was also liable along with the first defendant. In that case towards the borrowal of the first appellant/defendant, the second appellant/defendant/Director had issued five cheques for Rs.2/- lakhs, Rs.1.75 lakhs, Rs.1.20 lakhs, Rs.1.30 lakhs and Rs.1.25 lakhs those cheques, when presented, were dishonoured. Therefore, the learned Single Judge upheld the claim of the plaintiff against the second defendant also along with that of the first defendant. The facts in this case are different.

28. The learned counsel for the plaintiff had also relied on the order in **A.No. 3153 and 5936 of 2013 in C.S.No. 480 of 2013** wherein a learned Single Judge had held that on the materials produced by the plaintiff, it could be seen that the second defendant therein who was a director was trying to alienate the property only with an intention to delay the execution of decree that may be passed against the plaintiff. It was under those circumstances, the learned Judge had granted an order of Attachment before Judgment of the properties. It has to be pointed out that one of the primary contentions for Attachment before Judgment under Order 38 Rule 5 CPC is the possibility of alienation of property to defeat the claims of the plaintiff. In this case, there is no such averment. This is not an application under Order 38 Rule 5 CPC. The facts are different. Here it is a purely a one to one transaction between the plaintiff and the first defendant. The plaintiff may proceed further with that.

29. The plaintiff made payments to the first defendant. No further transactions have been established by the plaintiff. Only statements have been made that the payments were made under the request of the second to seventh defendants. This is merely a statement made on presumption.

30. On the basis of such statement, it is to be seen whether the plaintiff can be stated to have an existing cause of action. A mere statement, without any concrete basis and a further averment that the money from the first defendant had been transferred to the accounts of the second to seventh defendants are averments made on presumptions and assumptions. On the basis of those assumptions, it would be highly inappropriate to call upon the second to eighth defendants to participate in the trial proceedings, to go through the rigour of the trial process. The plaintiff has a direct cause of action against the first defendant. The plaintiff should rest contended with that.

31. In view of the above reasons, I hold that the applications have to be allowed and accordingly, the applicants are directed to be struck off as party/defendants in the suit.

23.12.2020

Index:Yes/No
Web:Yes/No

Speaking order : Yes / No
vsg

C.V.KARTHIKEYAN, J.

vsg

Pre-delivery order made in

A.Nos. 2735 to 2740 of 2020
IN
C.S.No. 226 of 2020

23.12.2020