



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.02.2020	Pronounced on: 26.02.2020
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

A.No.8146 of 2018
in A.No.4603 of 2019
in C.S.No.466 of 2013

M/s.Secure Energy Services Inc.,
(formerly known as M/s.Alliance Energy Services Ltd.)
Represented by its President and CEO,
Mr.Rene Amirault,
Bow Valley Square 2,
1900, 205 5th Ave SW,
Calgary, AB T2P2V7.

... Applicant

/versus/

1. M/s.Ennor Muds and Chemicals,
Rep. by its Proprietor,
Mr.N.Rajagopal,
Having their registered Office at
No.A-12, Anna Nagar (East),
Chennai – 600 102.

2. M/s.Alliance Energy Services Limited,
Registered Office at 3000, 700 - 9th Avenue SW,
Calgary, AB, T2P3V4, Alberta, Canada

... Respondents

Prayer:-

Judges summon under Order XIV Rule 8 of Original Side Rules read with order XIII-A of C.P.C., 1908.

- (i). To pass a summary judgment dismissing the suit as against the applicant.

For Applicant : Mr.Thriyambak J.Kannan

For Defendants : Mr.VPrakash, Senior Counsel,
for Jayendra Krishnan

ORDER

This application is filed by the 1st defendant to pass summary judgment dismissing the suit as against the 1st defendant.

2. The Affidavit filed in support of the application to pass summary judgment states that, the suit is filed by the plaintiff for recovery of Rs.1,54,30,560/- (One Crore fifty four lakhs thirty thousand five hundred and sixty only) along with future interest based on the alleged supply of chemicals made to the 1st defendant, who is the applicant herein. The Directors of the 1st Defendant's company were also arrayed as defendants on the premise that, they are jointly and severally liable along with the 1st defendant's company. These two Directors name were struck off pursuant to the application taken out under Order I Rule 10 of C.P.C., on the ground that, company being a separate legal entity from its shareholders and Directors, the Directors of the company cannot be held personally liable for the debts of the company. Then, the 1st defendant filed an Application No.6167 of 2015 under Order VII Rule 11 of C.P.C., for rejection of the plaint, which was predicated on the premise

that, the plaintiff did not supply any goods to the 1st defendant since the goods were effectively supplied only to one M/s.Alliance Energy Services Limited (AESL). The plaintiff, immediately impleaded the said M/s.Alliance Energy Services Limited. Thereafter, the petition filed by the 1st defendant for rejection of plaint was disposed of, in view of impleading M/s.Alliance Energy Service Limited.

3. The contention of the applicant/1st defendant in this application is that, only the 2nd defendant is the necessary party and allegation of the plaintiff that, they placed purchase order with the 1st defendant's company is incorrect. While filing the suit on misconception, the 1st defendant's company was described as a Company formerly known as M/s.Alliance Energy Services Limited. The suit was erroneously filed against the 1st defendant M/s.Secure Energy Service Inc., describing it as formerly known as M/s.Alliance Energy Services Limited, and two of its Directors. Later, by virtue of the Court order, the Directors of the Company, who were arrayed as 2nd and 3rd defendants were struck off as misjoinders. Thereafter, the plaintiff has thought fit to implead M/s.Alliance Energy Services Limited, with whom the plaintiff has trade contract. Having impleaded the M/s.Alliance Energy Services Limited as a defendant, the 1st defendant who is described as M/s.Secure Energy Services Inc. formerly known as M/s.Alliance Energy Services Limited which is based on misconception of fact deserves to be dismissed *in limine*.

4. The averment of the plaintiff is that M/s.Alliance Energy Services Limited was later renamed as M/s.Secure Energy Services Inc. is *ex facie* false and incorrect. M/s.Alliance Energy Services Limited and M/s.Secure Energy Services Inc. are two different and distinct entities. The plaintiff, on realisation of the said fact, has impleaded the M/s.Alliance Energy Services Limited. M/s.Alliance Energy Services Limited having its registered Office at 3000, 700-9th Avenue SW, Calgary, AB, T2P3V4, Alberta, Canada. Whereas, the Secure Energy Services Inc having its registered Office at 4500, 855-2nd Street SW, Calgary, AB, T2P 4K7, Alberta Canada. M/s.Alliance Energy Services Limited and M/s.Secure Energy Services Inc. are being two different and distinct entities, the 1st defendant cannot be sue on the premise that, it was formerly known as M/s.Alliance Energy Services Limited. The documents relied by the plaintiff indicates that, they had commercial relationship only with the M/s.Alliance Energy Services Limited and not with the M/s.Secure Energy Services Inc.

5. To counter this submission, the Learned Counsel for the plaintiff would submit that, to pass a summary judgment under Order XIII-A, the applicant should establish and satisfy the Court that, there is no possibility of success by the other side.

6. Initially the suit was filed against the 1st defendant and its Directors under the impression that M/s.Alliance Energy Services Limited has merged with

and the same. Later, when it came to know that M/s.Alliance Energy Services Limited has not merged with M/s.Secure Energy Services Inc, the Application to implead M/s.Secure Energy Services Inc was filed and allowed. However, the 1st defendant's Company is a cover of the 2nd defendant's Company run by the same Directors and therefore, there is necessity to pierce the corporate veil for arriving at fair justice.

7. The 1st defendant, who is the applicant herein had entered into a share purchase agreement with Marquis Alliance Energy Group Inc on 26th April 2012. The Company to which the plaintiff has supplied the materials, has taken different nomenclature and shape. However, the individuals, who are Directors and representatives of the 2nd defendant's Company are the Directors of the 1st defendant's Company and they have entered into a share purchase agreement on 26.04.2011 only to defeat the right of the plaintiff.

8. Whether the 1st defendant is the cover Company of the 2nd defendant and whether the veil has to be pierced is the subject matter for trial and it cannot be summarily decided under order XIII-A of C.P.C.

9. Whether the 1st defendant's company is proper and necessary party cannot be determined in an application under XIII-A of C.P.C. When admittedly the 1st defendant had entered into share purchase agreement with M/s.Marquis Alliance Energy Group INC, which is the sister concern of the 2nd defendant.

10. Referring the e-mail send by the Directors of the 2nd defendant's

Company, the documents which correlates those Directors and the 1st defendant's company, the learned Counsel appearing for the plaintiff would submit that the 2nd defendant is hiding behind the corporate veil. The defendants are group of companies under same Directors.

11. Order XIII-A of C.P.C in clear and unambiguous term states that, summary judgment against the plaintiff or the defendants can be passed if the plaintiff has no real prospect of succeeding the claim or the defendant has no real prospect of successful defending the claim.

12. On the face of the document relied by the plaintiff, the contract was between the plaintiff and the 2nd defendant M/s.Secure Energy Services Inc. Mr.Rene Amirault and Mr.Mike Curran are President and Vice President, who were the persons who have been communicating with the plaintiff and M/s.Alliance Energy Service Limited and they are also President and Vice President of M/s.Secure Energy Services Inc. Based on certain materials, the plaintiff initially had an impression that M/s.Alliance Energy Service Limited has got merged with M/s.Secure Energy Services Inc. By virtue of the share purchase agreement between the M/s.Secure Energy Services Inc and Marquis Alliance Energy Group Limited, the plaintiff was under the initial impression that M/s.Alliance Energy Service Limited has been merged with M/s.Secure Energy Services Inc. So he has filed the suit as against the M/s.Secure Energy Services Inc indicating they were formerly known as M/s.Alliance Energy

M/s.Alliance Energy Services Inc. It does mean that M/s.Secure Energy Services Inc is unnecessary party. Since the transformation of the Company which has purchased goods and fail to pay the value was not certain for the plaintiff, he has impleaded both the companies.

13. On the face of the record, Suit cannot be considered as a misjoinder of party at this stage. The documents and evidence to be relied by the plaintiff, may lead to piercing the corporate veil, then the 1st defendant's company may be liable for the suit claim. In the opinion of this Court, it is prematured to hold the 1st defendant is not a necessary party.

14. In any event, on that score, the summary judgment under Order XIII-A cannot be passed. These are facts, which has to be proved during trial. The status of the 1st defendant cannot be decided summarily when facts are disputed. Hence, the Application to pass summary judgment is *dismissed*.

सत्यमेव जयते

Sd./-G.J.J.
26/02/2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

JJ 03/03/2020

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.