



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

**C.R.P. (PD) (MD)No.2424 of 2017 and
C.M.P. (MD)No.11499 of 2017**

Subashis Lahiri

: Petitioner/
Petitioner

.. Vs ..

1.Southern Railway
Madurai Railway, Madurai Division,
through Senior Divisional Manager /
Co-ordination,
Madurai.

: 1st Respondents/
1st Respondents

2.Titagarh Marine Limited,
Premlata 4th Floor, shakespeare Sahni,
Kolkatta.

: 2nd Respondents/
2nd Respondents

PRAYER:Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.97 of 2017 in O.S.No.10 of 2016, dated 24.11.2017 on the file of the Additional District Court, Ramanathapuram.

For Petitioner : Mr.T.Selvan
for Mr.Alagu Balakrishnan

ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Judge, Ramanathapuram, in I.A.No.97 of 2017 in O.S.No.10 of 2016, dated 24.11.2017,

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The revision petitioner is the second defendant in the suit in O.S.No.10 of 2016, which was filed by the first respondent herein for a direction to direct the revision petitioner and the second

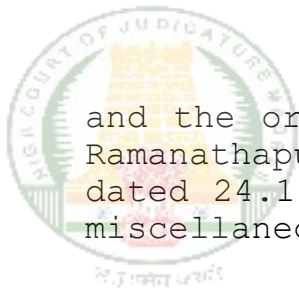


respondent to pay a sum of Rs.1,50,00,000/- as damages for damaging the plaint schedule bridge, which was constructed and belonged to the Railway. The suit was contested by the defendants. During the pendency of the suit, the revision petitioner filed an interlocutory application in I.A.No.97 of 2017 in O.S.No.10 of 2016 under Order I Rule 10(2) r/w Section 151 of CPC to strike out the name of the revision petitioner/second defendant from the plaint. This application was contested by the first respondent. The lower Court, after considering the facts and merits of the case, dismissed the petition. Aggrieved by the order of learned Additional District Judge, Ramanathapuram, the above Civil Revision Petition is filed.

4.The learned Counsel for the petitioner stated that the revision petitioner is not a proper and necessary party and there is no privity of contract between the plaintiff and the revision petitioner. He further stated that the plaint does not contain any specific allegation against the second defendant nor about his involvement, so as to make him liable for damages. It is also stated that no documentary or oral evidence is let in by the plaintiff for impleading the revision petitioner/second defendant in the suit.

5.This Court considered the sequence of events and the pleadings of respective parties. The plaint averments clearly indicate that the plaintiff has a cause of action to proceed against both defendants. The first respondent/plaintiff suffered loss on account of damages caused to the Railway bridge due to the collusion of a barge. It is stated that the defendants are respectively the owner and custodian of the barge, which hit the bridge. When the plaint discloses a cause of action for filing a suit as against the revision petitioner and the suit is for recovery of money from the defendants 1 and 2 jointly or severally, the issue whether the revision petitioner is liable for the suit claim has to be decided in the suit. The contention of the revision petitioner that the presence of revision petitioner is not necessary, as there is no specific allegation or averment made against the revision petitioner, cannot be accepted, having regard to the facts pleaded by the plaintiff in the suit.

6.When a question of liability has to be decided based on several materials at the time of trial, the revision petitioner's attempt to strike out his name from array of parties will cause serious prejudice to the plaintiff. This cannot be permitted, at the interlocutory stage, even before the evidence is recorded. This Court does not find any merit in the Civil Revision Petition, especially, when the order of lower Court does not suffer from any irregularity or illegality or



and the order passed by the the learned Additional District Judge, Ramanathapuram, in I.A.No.97 of 2017 in O.S.No.10 of 2016, dated 24.11.2017, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Additional District Judge,
Ramanathapuram.

+1 CC to M/s.ALAGU BALAKRISHNAN, Advocate (SR-13329[F] dated 29/07/2020)

C.R.P. (PD) (MD)No.2424 of 2017

28.07.2020

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