

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO No. 121 of 2017
With
CS No. 156 of 2016
IA No. GA 1 of 2017 (Old No. GA 1155 of 2017)
JAMSHED JUL IRANI & ORS.
VERSUS
UNION OF INDIA & ORS.

APO 122 of 2017
With
CS No. 157 of 2016
IA No. GA 1 of 2017 (Old No. GA 1154 of 2017)
PRADIP KUMAR KHAITAN & OTHERS
VERSUS
UNION OF INDIA & OTHERS.

APO No. 124 of 2017
With
CS No. 156 of 2016
IA No. GA 1 of 2017 (Old No. GA 1151 of 2017)
PRADIP KUMAR KHAITAN & ORS.
VERSUS
UNION OF INDIA & OTHERS

APO No. 128 of 2017
With
CS No. 157 of 2016
IA No. GA 1 of 2017 (Old No. GA 1146 of 2017)
JAMSHED JUL IRANI & ORS.
VERSUS
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: July 30, 2021.

(Via Video Conference)

Appearance:
Mr. Ratnanko Banerjee, Sr. Adv.
For the Appellants

Mr. Sandip Kumar Bhattacharya, Adv.
For the Comptroller and Auditor.

Mr. R.N. Bag, Adv.
Mr. D.K. Singh, Adv.
For the Respondents.

The Court:- As the issue involved in these appeals is common, we are disposing of this batch of appeals by this judgment and order.

The reference to a suit in our judgment will denote any one of the suits, which are the subject matter of these appeals.

The suit by the respondent/plaintiff railways against the appellant/defendant is for recovery of a substantial sum of money on account of railway freight.

In the plaint, apart from the company, M/s. Electrosteel Castings Limited, a large number of defendants have been impleaded and described as “the present members of the Board of Directors” of that company.

The reliefs are jointly and severally claimed against the defendant company and the other defendants.

A very broad justification for this - without any particulars or details, - is sought to be advanced in a paragraph of the plaint. It is averred that the defendant company is under the control and management of the said other defendants and that these defendants are jointly and severally liable “for every action of the defendant no.1 company”.

Two substantial points are raised by Mr. Ratnanko Banerjee, learned senior advocate for the appellant, in support of the appeal.

The first is that many of the defendants are not directors of the defendant company at all. They are being wrongly impleaded and will have to undergo the rigours of prosecuting this litigation.

Secondly, the cause of action in the case discloses no liability of any defendant other than the defendant company. He says that it is a money suit where in the cause of action as framed, the reliefs claimed could only be against the defendant company and not against its directors or any other officer.

It is submitted that the names of the said other defendants be struck off from the cause title.

The averments in the plaint have to be considered.

We have very carefully perused the plaint.

The plaint has been drafted without the care required. It is devoid of the required details. Nevertheless, there are pleadings to the effect that the

defendant company is under the control of the other defendants and that all its acts are at their dictate.

Whether the plaintiff would be able to maintain their case of fastening liability jointly and severally on the directors would become more clear once the written statement is filed, documents are disclosed and the suit progresses towards trial.

From a reading of the plaint it is not possible for the court to come to any conclusion, whether any of the impleaded defendants is a director or not.

The question arises as to the stage, when this consideration whether the said other defendants have been rightly or wrongly impleaded is to be made by the Court.

We are of the opinion that if that stage is deferred to when all the issues are being determined, it would be wholly against the interest of justice because if the said other defendants are ultimately found to be not necessary parties, they would have to undergo a lot of inconvenience before their fate is decided. If the issue is decided in favour of the appellant, it would amount to improper impleadment of a party. The court would be obliged to strike off his name from the records under Order I rule 10(2) of the Civil Procedure Code. It would tantamount to a bar to the suit as against the appellant.

Order XIV rule 2 states:

“[2. Court to pronounce judgment on all issues. – (1)
Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

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(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]”

In those circumstances, we are of the view that these two issues, namely, whether the said other defendants are the directors of the defendant company or not and whether on the basis of the case made out by the plaintiff they can be held jointly and severally liable should be decided first as preliminary issues, before any other issue is decided.

It would be fit and proper that immediately after filing of the written statement, the issues including the preliminary issues are framed. Discovery be made only of those documents which are relevant for the purpose of deciding the preliminary issues.

Thereafter, the other issues may be decided.

Time to file the written statements is extended till 31st August 2021. Discovery of documents in terms of this order is to be made by 10th September 2021; inspection forthwith.

The appeals (APO 121 of 2017, APO 122 of 2017, APO 124 of 2017 and APO 128 of 2017) and the applications (GA 1155 of 2017, GA 1154 of 2016, GA No. 1151 of 2017 and GA No. 1146 of 2017) are disposed of by this order.

In parting, we record that the reports as directed earlier by this court have been filed by the Comptroller and Auditor General.

We have not gone into the contents of the report. It is kept open to be considered by the learned single judge, if so required.

(I. P. MUKERJI, J.)

(ARINDAM MUKHERJEE, J.)