

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4292 OF 2021

CEAT Limited

.. Petitioner

Versus

Roadway Solutions India Pvt.Ltd

and anr

.. Respondents

...

Mr.Zerick Dastur, Archana Uppuluri, Tanvi Gaitonde i/b Zerick Dastur, Advocates & Solicitors for the petitioner.

Mr.Sandeep Sharma for respondent no.1.

Mr.Sarthak Mannan with Kanika Mitra for respondent no.2.

CORAM: BHARATI DANGRE, J.

DATED : 30th NOVEMBER 2021

P.C:-

1 Heard learned counsel for the petitioner and learned counsel for the respondent.

Rule. Rule made returnable forthwith. Heard by consent of the parties.

2 The petitioner, the original plaintiff filed a recovery suit against the respondent no.1 for recovery of an amount of Rs.61,82,288/- in the backdrop of its case that the plaintiff from time to time, had supplied tyres, tubes and flaps to the

respondent no.1 and had raised invoices which were duly acknowledged by the respondent no.1. It was pleaded that though the goods were accepted without any demur, to the quantity and quality, there was failure to make the payments of the outstanding sums raised under the invoices and despatched when there was verbal assurance to effect the payment, there was a deliberate attempt to make the payment due and payable. This constrained the Plaintiff to file a recovery suit on 23rd January 2017.

3 On summons being issued and service being effected on respondent no.1, there was a failure to file written statement within the prescribed statutory period, which constrained the Civil Judge, Sr. Division Pune to pass an order of 'No Ws'. The Suit thereafter proceeded without written statement of the defendant and after evidence of the plaintiff, was posted for final arguments on 13th February 2020, when the counsel for the defendant filed Application vide Exhibit-61 for grant of time to seek instructions from the defendant. On 28th February 2020, an application was filed along with the list of documents vide Exhibit-68 on behalf of third party M/s.Roadway Solutions India Infra Ltd, for adding it as defendant no. 2 in the suit by invoking Order 6 Rule 17 of CPC, which was opposed by the plaintiff by filing reply.

4 The third party sought its impleadment in the Suit which impleaded the original defendant, in the backdrop of an order passed by the National Company Law Tribunal, Mumbai for Demerger of the defendant Company with the third party i.e.M/s. Roadway Solutions India Infra Ltd. The petition being allowed by NCLT, sanction was granted to the scheme of demerger by order dated 2/11/2018. Based on this, it was pleaded that all the assets and liabilities of the defendant company are transferred to the third party company and therefore, its impleadment in the Suit is necessary. The delay in filing the said application is also sought to be justified by submitting that though the NCLT had passed the order in 2018, due to oversight, the third party did not intervene in the suit and for effective adjudication of the suit filed by the plaintiff against the original defendant, its presence is very much necessary.

5 The said application came to be allowed by Civil Judge, Sr Division on 6/3/2021 by recording as under :

(7) Now as per the order of Hon'ble NCLT Mumbai the Construction Business Undertaking of the Demerged Company shall be transferred and vested to the Resulting Company, along with its liabilities and Assets. The Demerged Company shall continue with its other business. But at the same time as per clause 10(a) of said order. All assets and liabilities including tax and charges, if any and duties of the all Demerged Undertaking of the Demerged Company, shall, pursuant

to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company.

Now so far as the transaction in between the plaintiff company and the defendant/Demerged company are of which type is not yet clear. In such situation the prayer made by both i.e. the Third Party and the plaintiff are premature. The Third Party can not be joined as defendant no. 2, so also it can not be joined as "Now Known as "as prayed by the plaintiff.

As against this the third Party can be now added as after the name of present defendant as "Now Demerged as Roadway Solutions Infra Limited...

(8) But at the same time it cannot be forgotten that, the Resulting Company i.e. Third Party came before Court at the stage of final argument of the matter which proceeded without written statement against the defendant since 26/07/2017. Therefore, here, the Third Party cannot claim the liberty of adding party as new defendant. On the contrary because of the negligence of the defendant, Third Party has to file its written statement with the permission of this Court, as the Third Party has come in capacity of the present defendant and not as new defendant. The third party is at liberty to show that how it is not concerned with earlier defendant so far as the cause of action of present suit is concerned."

6 It is this order which bother the plaintiff, who has filed the petition. The above aforesaid observation of the learned Judge do not depict a correct approach, as he has held that the third party is at liberty to show how it is not concerned with the

earlier defendant, as far as cause of action of present suit is concerned. This observation completely ignore the effect of the order passed by the NCLT (National Co. Law Tribunal), Mumbai where it granted sanction to the scheme of arrangement of M/s.Roadway Solutions India Infra Ltd (demerged company) - original respondent with Roadway Solutions India Infra Ltd (Resulting Company) third party and their respective shareholders. On approving the scheme of arrangement by passing the board resolutions, the parties had approached the Tribunal for sanction of the scheme. Pursuant to the said scheme, the construction business undertaken of the de-merged company was transferred and vested in the resulting company along with its liabilities and assets. The Demerged company continued with its other business undertakings.

7 On the scheme being placed and being examined by the Tribunal, since it appeared to be fair and reasonable and was not violative of any provision of law or contrary to public policy, it was sanctioned with the following effect amongst other;

(a) All the assets and liabilities including taxes and charges, if any, and duties of all Demerged Undertaking of the Demerged Company, shall, pursuant to S.232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company.

8 The appointed date of the scheme was scheduled as 1/4/2017. The effect of the scheme being sanctioned, is that all the assets and liabilities including the taxes and charges as well as duties of the demerged undertaking of the demerged company, stand transferred and became liabilities and duties of the resulting company.

9 On the scheme being sanctioned, the third party approached the Court in which the Recovery suit filed by the plaintiff is pending and it sought its impleadment on the ground that all assets and liabilities of the defendant company are transferred to it and therefore, it is necessary to be impleaded as a respondent. So far so good, the third party is permitted to be added after the name of the original respondent by inserting "Now de-merged as Roadway Solutions India Infra Ltd".

 However, on a request being made for filing of a written statement, it has been allowed, which can in no way be justified.

 The proposed defendant has merely stepped into the shoes of the original defendant and has taken over the liabilities of the former. There is no question of the third party showing as to how it is not concerned with the earlier defendant as far as the cause of action of the present Suit is concerned, since the resulting company/third party has taken over all the liabilities and assets of the demerged company. The demerged company was engaged

into various businesses and towards the same, the plaintiff had supplied goods to it, for which the invoices were raised. If the third party had not substituted the original defendant and the business was not in relation to 'construction business undertaking', there was no need for it being impleaded as a defendant. It has chosen to be impleaded on its own say that it has undertaken the assets and liabilities of the original defendant. However, since the original defendant had failed to file the written statement and State is at a stage where the evidence of the parties is also over, the order of 'no written statement' cannot be overturned at instance of the third party permitting it to file its written statement, when the original defendant has never challenged the order of 'No Ws'. It chose to continue with the Suit, which has now reached the stage of final culmination. Ultimately, it is a suit for recovery of money and is instituted in the year 2017. At the fag end of its journey, the third party who has stepped into the shoes of the original defendant cannot be permitted to interject the proceedings in the Suit and the course adopted by the trial court is not a correct one.

The impugned order, therefore, call for an interference and though the impleadment of the third party is permitted to stand, the permission granted to third party to file written statement is liable to be set aside in light of the aforesaid.

10 Needless to state that the defendants are entitled to proceed ahead and advance their submissions on the points available to them in law including, the point of maintainability of the suit, limitation etc.

11 With the aforesaid observation, Writ Petition is partly allowed, setting aside the portion of permitting filing of written statement by the third party.

SMT. BHARATI DANGRE, J