A.Nos.562 and 563 of 2021
in C.S.No.262 of 2019

Dr.G.JAYACHANDRAN, J.

These two applications are filed by the second and third defendants to strike out their name from the suit.

2. The short point canvassed by the applicants in these applications is that they are unnecessary party to the present suit. No cause of action is shown in the plaint against these applicants. The applicants are arrayed as parties in their personnel capacity out of malice and it is filed by the plaintiff to cause mental agony and harass to the applicants.

3. Learned counsel for the applicants appearing for the second and the third defendants in the suit submitted that the suit loan transaction was between the plaintiff and the first defendant Company. The defendants 2 and 3 are the Directors of the Company. They cannot be personally held liable for the loan availed by the first defendant Company. According to the learned counsel, the defendants 2 and 3 as Directors, who mediates between the shareholders and the Company but cannot be held personally liable for the liability of the Company.

4. Per contra, the learned counsel for the plaintiff submitted that the defendants 2 and 3 have not only signed in the Finance Agreement on behalf of the first defendant Company but also executed pronote dated 15.06.2017 in their personal capacity as well as executed a Supplementary Agreement dated 31.08.2018 as well wherein they have agreed to repay their loan in their personal capacity as well.

5. A perusal of the clauses in the Finance Agreement and the Supplementary Agreement clearly indicates that the defendants 2 and 3 has consciously borrowed the money from the plaintiff and had executed these documents knowing well that they have committed to repay the loan on behalf of the Company as well as personally. More so, the pronote executed by the defendants 2 and 3 in their personal capacity indicates that they are proper party to the proceedings even if not necessary parties.

6. Liability to pay personally is a matter of fact which can be decided after trial, but this is not a fit case to strike off the defendants 2 and 3 invoking Order I Rule 10(2) of C.P.C. The statements made in the plaint and the documents filed along with the plaint prima facie show that the defendants 2 and 3 have not only signed the loan agreement on behalf

of the Company but had also committed to repay the loan to the plaintiff personally by executing pronote dated 15.06.2017 and Supplementary Agreement dated 31.08.2018.

7. This Court finds that these applications are filed after two years of instituting the suit and that too after completion of the pleadings, when the matter is posted for framing of issues. This Court finds that these applications are filed, on merit or not with bonafide intention. Hence, both the applications are dismissed. Each of the applicant shall pay cost of **Rs.10,000/- (Rupees Ten Thousand only)** to the plaintiff.

Post the suit for framing issues on **15.09.2021**.

18.08.2021

vri

DR.G.JAYACHANDRAN,J.

VRI

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18.08.2021