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1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 22ND DAY OF SEPTEMBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.2847 of 2021

in

C.S.(Comm.Div.) No.59 of 2018

M/s.Indus Cityscapes Constructions Pvt. Ltd.,
having business at No.5-C, Ega Trade Centre,
809, P.H.Road, Chennai-600 010
rep. by its Director

... Plaintiff

-Versus-

1. M/s.Karismaa Foundations Pvt. Ltd.,
rep. by its Director, Mr.Rakesh P. Sheth,
340, 1st South Main Road,
Kapaleeswarar Nagar, Neelankarai,
Chennai-600 115.

2. Mr.Rakesh R.Seth,
340, 1st South Main Road,
Kapaleeswarar Nagar, Neelankarai,
Chennai-600 115.

3. Mrs.Roshini P.Sheth,
340, 1st South Main Road,
Kapaleeswarar Nagar, Neelankarai,
Chennai-600 115.

... Defendants

A.No.2847 of 2021:

1.Rakesh R.Seth,
340, 1st South Main Road,
Kapaleeswarar Nagar,
Chennai-600 115.

..1st Applicant/2nd Defendant



2. Roshini P.Sheth,
340, 1st South Main Road,
Neelankarai,
Chennai-600 115.

...2nd Applicant/3rd Defendant

-Versus-

1.M/s.Indus City Scapes Constructions Pvt. Ltd.,
No.5-C, Ega Trade Centre,
809, P.H.Road, Chennai-600 010. ..1st Respondent/Plaintiff

2.M/s.Karismaa Foundations Pvt. Ltd.,
Rep. by its Director,
Mr.Rakesh P Sheth
340, 1st South Main Road,
Kapaleeswarar Nagar,
Chennai 600 115. ..2nd Respondent/1st Defendant

Application praying that this Hon'ble Court be pleased to pass an order to strike out the name of the Applicants herein, the 2nd and 3rd Defendant in the above mentioned suit in C.S.59 of 2018 as improper party in the above said suit in accordance with the provisions contained in Order 1 Rule 10(1) of Code of Civil Procedure 1908.

Application coming on this day before this Court for hearing, the Court made the following order:

Heard the learned counsel for the applicants/defendants 2 and 3 and the learned counsel for the plaintiff.



2. The application is filed by the defendants 2 and 3 to strike off their names in the plaint on the ground that they are not a proper party in the suit filed against the 1st defendant company incorporated under the Companies Act.

3. According to the applicants/defendants 2 and 3, this is not a case where the veil of the corporate should be pierced. The suit being filed against the registered company, the Directors in their personal capacity need not be impleaded.

4. To counter the said application, the learned counsel for plaintiff would submit that the suit is filed for damages, due to breach of agreement entered between the plaintiff and the 2nd defendant, who was the proprietor of Karismaa Foundation on date 24.08.2009, when the agreement was entered between the plaintiff and the 2nd defendant Mr.Rakesh P. Sheth as proprietor of Karismaa Foundation. Based on the representation of the 2nd respondent and the 3rd defendant, the plaintiff entered into the said agreement. Thereafter, the proprietor concern was converted into a limited company on 10.11.2010. Hence narrating the role of the defendants 2 and 3 in concluding the contract, suit has been filed against the company as well

as its Directors who are the applicants herein. Therefore, there is no



necessity to strike off these two applicants from the plaint.

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5. The learned counsel for the applicants would submit that both the plaintiff and the defendants being a corporate company, there is no necessity to implead the Directors of the 1st defendant company. However as pointed out by the learned counsel for the plaintiff, the agreement dated 24.08.2009 was entered between the plaintiff and the 2nd defendant who was the proprietor of Karismaa Foundation signed the agreement. Only thereafter, the transformation of the defendant concern as company had taken place.

6. It is the specific statement of the plaintiff that the agreement was entered on the representation of the 2nd and 3rd defendants. Therefore, this Court is of the view that the defendants 2 and 3 are the proper party and even though the defendants counsel would say that the suit is filed to counter blast their suit in C.S.No.632 of 2018, the merits of the case has to be decided only after examination of witnesses and appreciation of documents. Now it is pre mature to say anything about the merits of the case. Likewise the plaintiff has made out a prima facie case against the defendants 2 and 3 to array them as a proper party. Hence the application to



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5

7. Hence the application is dismissed.

Sd/-G.J.J
22.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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

JJ 27/09/2021