



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 7TH DAY OF SEPTEMBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A. No.2602 of 2021

in

C.S.(Comm.Divn.)No.225 of 2020

C.S. No.225 of 2020:-

Omkar Clean Energy Services Pvt. Ltd.,
No.1A, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai-600 034

through its Director, Mr.N.Srinivasan

... Plaintiff

-Versus-

1. Royal Sundaram General Insurance Co., Ltd. (*)
21, Patulillos Road, Chennai-600 002.

2. JLT Independent Consultancy Service Pvt. Ltd., (*)
Capitale Towers, Anna Salai,
Teynampet, Chennai-600 018.

(Amended as per order dated 30.04.2021 in A.No.1921/2021(*))

3. Proclaim Insurance Surveyors and Loss Assessors Pvt. Ltd.,
New No.21D (Old No.14) ARK Colony,
Eldams Road, Alwarpet, Chennai-600 018.

4. Mr.Raja Mohamad,
Mumtaj Manzil, 7-14, Muslim Street,
Thirupparankundram, Madurai-625 005.

... Defendants



A. No.2602 of 2021:-

1.JLT Independent Insurance Brokers Pvt. Ltd.,
(Formerly known as JLT Independent
Insurance Brokers Pvt. Ltd.)
Capitale Towers, Anna Salai,
Teynampet, Chennai-600 018.

..Applicant/2nd Defendant

-Versus-

1.Omkar Clean Energy Services Pvt. Ltd.,
No.1A, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai-600 034
through its Director, Mr.N.Srinivasan

... 1st Respondent/Plaintiff

2.Royal Sundaram General Insurance Co., Ltd.,
21, Patullillos Road, Chennai-600 002. ..2nd Respondent/1st Defendant

3.Proclaim Insurance Surveyors and Loss Assessors Pvt. Ltd.,
New No.21D (Old No.14) ARK Colony
Eldams Road, Alwarpet,
Chennai-600 018. ..3rd Respondent/3rd Defendant

4. Mr.Raja Mohamad,
Mumtaj Manzil, 7-14, Muslim Street,
Thirupparankundram, Madurai-625 005. ...4th Respondent/4th Defendant

Application praying that this Hon'ble Court be pleased to
delete/strike-out the name of the Applicant/2nd Defendant from C.S.No.225
of 2020.

This Application coming on this day before this court for hearing, the

Court made the following order:



Heard the learned counsel for the applicant/ second defendant and the learned counsel for the plaintiff.

2. The suit is filed by the insured against the insurer and the other three defendants who are the intermediary surveyor company and the surveyor. The suit is on the premise that, in spite of due insurance coverage, the first defendant/insurer has failed to adequately compensate.

3. The application under consideration is filed by the 2nd defendant intermediary, who is an independent insurance consultancy or other wise known as insurance broker, who facilitated the contract between the insured (plaintiff) and the insurer(1st defendant).

4. In this application, the second defendant has sought for deletion / strike out the name of the second defendant from the suit on the ground that he is neither a proper party nor a necessary party to the lis and therefore, there is no cause of action to join the second defendant as a party to the suit.

5. Referring the relief sought in the suit, the learned counsel for the applicant/second defendant submits that there is no relief sought against the second defendant. The insurance contract was only between the plaintiff



and the first defendant. While so, it is improper to join the second defendant as a party to the suit.

6. The learned counsel for the applicant/second defendant would further submit that though the second defendant as an intermediary as narrated in the plaint, neither the preparation survey report nor in the rejection of the claim, he had any role to play. The cause of the action for the suit has arisen only on the rejection of the claim which is based on the survey report. The second defendant is neither a party to the survey report nor to decision rejecting the claim.

7. In the counter affidavit filed by the plaintiff, it is stated that the second defendant had facilitated the plaintiff's purchase of both insurance policies from the first defendant. During the pre-survey, survey, claim evaluation and decision making process, the second defendant was involved and there are letters communication between the plaintiff and the second defendant. The second defendant, in turn, had communicated with the first defendant and the other defendants. These fact are relevant in this case. As a dominant litus, the plaintiff has chosen to array the second defendant as a party who is a necessary party and not an alien to the transaction.



8. For the said purpose, the learned counsel for the plaintiff would refer the averments in paragraphs 13, 20, 24, 25, 27 and 44 to 46 and submit that the plaint discloses sufficient cause to array the second defendant as one of the parties in the suit and therefore, it is incorrect to say that there is no cause of action as against the second defendant. Just because no relief is sought against the second defendant, this defendant cannot seek for strike off his name from the plaint.

9. On perusing the plaint, this Court finds that the involvement of the second defendant in the subject matter of the contract has been explicitly narrated and more particularly, at paragraph 44, 45 and 46 of the plaint, the plaintiff has narrated how the second defendant's role mattered in the decision of the first defendant to reject the claim. The averments and the statement made in the pleadings have to be tested through trial and cannot be decided by the counter statement in the pleadings. From the admission, it is clear that the second defendant had played pivotal role in concluding the contract between the first defendant and the plaintiff. Before and after the incident, the second defendant had been the conduit between the plaintiff and the first defendant. The e-mail communications between the parties including the second defendants provides an impression that the second

defendant is a necessary party to the proceedings and in case if he is not



arrayed as a party, it may be detrimental to the case of the plaintiff.

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10. From the pleadings, it *prima facie* appears the 2nd defendant is a necessary party. The submission of the learned counsel for the applicant/second defendant is a matter of fact which is to be tested during the trial and to be decided at the time of judgment. Going by the narration found in the plaint and the e-mail communications with second defendant relied by the plaintiff, whether the second defendant had a role in preparing survey report and the decision of rejecting the claim will be tested in trial and decided at the time of judgment. It is now premature for the Court to hold that the second defendant had no role in preparing the survey report or rejection of survey report.

10. Hence, the application to strike off filed by the second defendant is dismissed.

Sd./-G.J.J
07/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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Jj 21/09/2021