IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 7TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

A.No.3124 of 2021
in
C.S.No.86 of 2004

Mr.Vijay Nahar
residing at
New No.26,Hadows Road,
Vandana Towers (6A(
Chennai -600 006 ... Plaintiff

-Versus-

1.Mr.Anil Nahar
residing at
No.15 & 15 A,
Kannadasan Road,
T.Nagar, Chennai – 17

2.M/s.Transworld Exports (P) Ltd.
Rep.by its Director Mr.Anil Nahar,
15-A, New No.21,
Kannadasan Road,
T.Nagar, Chennai – 17 ...Defendants

A.No.3124 of 2021:

Mr.Vijay Nahar
New No.26, Hadows Road,
Vandana Towers (6A)
Chennai -600 006 ... Applicant

-Versus-

1.Mr.Anil Nahar
No.15 and 15A, Kannadasan Road,
T.Nagar, Chennai – 600 017.

2.M/s.Transworld Exports (P) Limited
represented by its Director Mr.Anil Nahar,
New No.21, Kannadasan Road,
T.Nagar, Chennai –600 017. ..Defendants

3.Mrs.Raj Kumari Nahar,
aged about 57 years,
wife of Mr.Anil Nahar,
No.15 & 15A, Kannadasan Road,
T.Nagar, Chennai 600 017.

4.Mr.Ashish Nahar,
aged about 33 years,
son of Mr.Anil Nahar,
No.15 & 15A, Kannadasan Road,
T.Nagar, Chennai 600 017.

5.Mrs.Sonali Baid,
aged about 36 years,
wife of Mr.Piyush Baid,
International Diamond Company,
18th Floor, No.1807, Charni Road,
Pncharatna, Opera House,
Mumbai 400 004. ..Proposed Defendants/Respondents

Application praying that this Hon'ble Court be pleased to permit the plaitniff/Applicant to implead Respondents 3 to 5 herein as Defendants 3 to 5 in C.S.No.86 of 2004.

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

This application is filed by the plaintiff for impleading the wife and children of the first defendant. The backdrop facts may now be stated :

- The plaintiff had laid a suit for declaration of his half share in the suit properties and for partition and handing over possession to him.

- The plaintiff and the first defendant are the brothers and they are the sons of D.C.Nahar. D.C.Nahar and the plaintiff have started the second defendant company in the year 1973. The second defendant-company is a private company in one sense, and in one sense it a family control company. Late D.C.Nahar, the plaintiff and the first defendant all hold shares in the company.

- While so, Vide Ext.D9, Ext.D11 and Ext.D12 (Ext.D9 is the letter dated 18.7.1877 addressed to M/s.Novelty Exports, Ext.D12 is the letter 01.12.1977 addressed to the second defendant and Ext.D11 is the release deed dated 14.09.1977, by the plaintiff) under which the plaintiff is stated to have given up his interest over the shares in the company.

- Be that as it may, D.C.Nahar had passed away on 11.01.2000. It is in this backdrop, the plaintiff had laid the suit for partition.

- It may be now mentioned that D.C.Nahar has taken another lady in his life and she is one Sreelatha. There are certain differences expressed as to her real status, but it it not very material now.

- D.C.Nahar is stated to have held 22,500 shares in the second defendant-company. He had transferred 50% of his share holdings in favour of Sreelatha. After his death, this issue appeared to have become a point of dispute and Sreelatha had approached the Company Law Board. The first defendant had preferred a suit against Sreelatha in O.S.No.7760 of 2000 before the City Civil Court, Chennai. The matter pending before the City Civil Court, came to be settled by the parties themselves. The plaintiff himself narrates his knowledge about this proceedings in paragraph No.5 of the plaint as follows :

  "5. The plaintiff's father D.C.Nahar died on 11.01.2000. After the death of the father, the 1st defendant began to assert his control and superiority over others which resulted in the second wife of the plaintiff's father Mrs.Sreelatha Nahar instituting proceedings before the Company Law Board against the 1st defendant and the company for various relief's including appointment of receiver to administer the property viz., 15 & 15A, Kannadasan Road (originally Venkatanarayana Road), T.Nagar, Chennai 600 017, which was the property purchased

in 1973 and 1976 as stated above. There were also other proceedings in the City Civil Court, Chennai, between Anil Nagar and Sreelatha Nahar in O.S.No.7760 of 2000, seeking an injunction against the said Sreelatha Nahar. While the matters were pending thus the first defendant paid a substantial sum to the said Sreelatha Nahar in settlement of her share in the above said property and estate of D.C.Nahar. A bare perusal of the pleadings in the said proceedings in the Company Law Board and City Civil Court would clearly show that the first defendant, after the death of the father with an evil intention to appropriate the said property and profits of the business had manipulated the accounts and records of the company and hypothecating the assets of the company including the immovable properties to meet the requirement of his personal business concerns. Since the plaintiff did not suspect the bonafides of the 1st defendant there was no necessity to investigate and enquire into the allegations at that time. After the proceedings were terminated, the plaintiff approached the first defendant to effect partition of the properties of the family which included two more properties situate in East Coast Road, Uthandi and another at Jodhpur."

- Prior to the institution of the suit, there were exchange of notices between the parties, and in his reply dated 22.03.2008, marked as Ext.P7, it was disclosed that at the time of his death, D.C.Nahar had no shares in the second defendant-company. (This also finds some expression in the written statement from Paragraph No.15 upwards, more particularly in Paragraph No.19 of the written statement).

- While so, issues were framed and the matter went to trial. The trial commenced on 30.07.2013. After the closure of evidence for the plaintiff, the first defendant examined himself as D.W.1. He was examined in chief on 04.12.2014. He during his examination, had introduced Ext.D54, the register containing the names of the members and shareholders ; and individual share certificates issued in favour of first defendant, his wife Rajkumari and son were marked as Ext.D55 to Ext.D58. He was cross-examined extensively on these documents on various dates, but only in the cross-examination on 04.10.2017, it was suggested to him that those certificates are forged.

- Thereafter, the plaintiff has filed the following applications :

  (a) A.No.802 of 2019 - seeking a direction to the defendants to produce the originals of certain documents.

  (b) A.No.803 of 2019 – seeking a direction to the defendants to produce the books containing the minutes of the Annual General Body Meeting

  (c) A.No.805 of 2019 – filed to invoke Order 26 Rule 10A r/w. Section 151 CPC., for appointing an expert commission to compare the signatures of his father D.C.Nagar in Exts.D52 to D54.

  (d) A.No.807 of 2017 – for issuing subpoena to the Manager, M/s.Vijaya Bank to produce the records under his custody for the purpose of comparing with the disputed signatures in Ext.D19, D48, D55, D56, D57 and D58.

(e) And A.Nos.798 of 2019 & A.No.799 of 2019, have been filed seeking a direction to reopen the evidence and to permit the plaintiff to file certain additional documents respectively.

All these applications came to be dismissed by a learned Single Judge of this Court on 26.03.2021, and challenging which the plaintiff has moved the Division Bench in OSA.Nos.257, 263 to 267 of 2021. On 18.08.2021, that came to be dismissed.

- After the dismissal of the above OSAs, the plaintiff has taken out the present application in A.No.3124 of 2021, to implead the wife and children of the first defendant as additional defendants 3 to 5.

2. The counter to this application is not filed, but Mr.P.H.Arvind Pandian, learned Senior Counsel was ready to oppose the same at the threshold.

3. The learned counsel for the plaintiff would submit that the plaintiff came to know of the factum of forgery only when Exts.D52 to D54 were produced in the Court. Now, if the documents are forged, it cannot convey any right to anybody, and not only that the plaintiff would remain cheated, but such

process would also constitute an abuse of judicial process of this Court.

4. Intervening the said submission, this Court itself raised certain queries, and they are as follows:

(a) The suit is now in the seventeenth year of its institution, and the trial has commenced even in 2013, and after the dismissal of OSAs on 18.08.2021, what significant purpose could be achieved by impleading this parties ?

(b) What about limitation?

5. The learned counsel for the plaintiff would submit that the Hon'ble Supreme Court in its order dated 23.03.2020 Writ Petition (Civil) No. 3/2020, took *Suo Motu* cognizance of the difficulties faced by litigants in approaching various Courts and Tribunals due to ongoing pandemic and consequent National lockdowns and has freezed the time from running in operation and suspended the period of limitation in filing petitions / applications / suits / appeals etc., He also reiterated that the plaintiff came to know of the forgery only in October 2017.

6. Refuting the same, Mr.P.H.Arvind Pandian, learned Senior Counsel

appearing for the first defendant made a statement and argued that the plaintiff has filed Ext.P3 as an additional document and this was introduced during his chief examination on 30.07.2013. This document details the particulars of members of the company, and this has been obtained by the plaintiff from the Registrar of Companies on 11.03.2004. This document lists the names of shareholders in the company which includes the names of the first defendant's wife and children, besides D.C.Nahar as shareholders of the company. This would indicate that the plaintiff is in know of these details at or about the time when the suit was instituted.

7. The counsel for the plaintiff now intervened to submit that even in paragraph No.5, there was an indication to this effect, but the plaintiff plea then was that he believed that those share transfers were bonafide and genuine, and that he came to know of the forgery only in October 2017, when the documents were introduced in evidence by D.W.1 .

8. However, Mr.P.HArvind Pandian, learned Senior Counsel brought to the notice of the Court that this document was introduced not in the year 2017 but on 18.12.2014, when DW1 was examined in chief. He would further argue that even if the plaintiff were to consider that share transfer was

forged, it still could not be proved for, what is now challenged are the signatures in the share certificates and not in the share transfer forms. Secondly, the attempt of the plaintiff to prove that the signatures in share certificates were forged is negatived by the Division Bench of this Court in O.S.A.Nos.257, 263 to 267 of 2021. Shifting to the present application for impleading the wife and children of the first defendant is concerned, Mr.P.HArvind Pandian would argue that this application is motivated and has been filed after considerable period of time when the plaintiff had the best of particulars to implead them even in 2004. Even if he were to implead the proposed parties now, the claim against them is terribly barred by limitation.

9. In response, the learned counsel for the plaintiff would contend, that time may have to be reckoned not from the date of production of the document since at that point of time, there was no suspicion on the part of the plaintiff as to the genuineness of the documents, and time will start running only from the date on which the plaintiff has come to know of the forgery. He added that the originals of these certificates were produced only on 04.10.2017.

10. Let the situation be analysed to the extent the evidence already available on record may suggest : Here is a plaintiff who knew Vide Ext.P3 who the

shareholders of the company are even in 2004. If the plaintiff pleas that the second defendant company is a family-run company and hence its assets are partible is accepted on its face value, then these shareholders now sought to be impleaded ought to have been arrayed as defendants even in 2004. This would mean that the allegation if the share transfers in their names is bonafide or genuine or under forged documents have only secondary importance. Secondly, the time would start running on the plaintiff even going by his statement right from the time these documents were produced by D.W.1 in his evidence sometime in 2013. Even if his date of knowledge attributed to October 2017 is reckoned, there is no explanation why he further delaying the process of impleading them till 03.09.2021. There ought to be lot of responsibility in the litigants to make the best use of the judicial forum. This Court cannot countenance its abuse as blatantly as it is now attempted. Courts are not casinos for a litigant to use it at the time of their convenience. True, the Hon'ble Supreme Court has passed an order on 23.03.2020 in s*uo motu* Writ Petition (Civil) No. 3/2020, to alleviate the difficulties created by pandemic and the absence of statutory mechanism to deal with it, when it suspended running of limitation. But, Ext.P3 is obtained from the Registrar of Companies even in 2004, and this is the earliest document which imputes knowledge to the plaintiff as to the

shareholding pattern of the second defendant-company. And, as already indicated even if the assests of the second defendant is considered partible, these proposed defendants have to be in the party array long back. There is yet another angle to this.

11. Whichever way this Court looks at the present attempt of the plaintiff to implead the proposed respondents 3 to 5 are concerned, this Court does not see an iota of reason to justify the same. The application, it is held is not sustainable in law, facts or in procedure. Hence, it is dismissed.

Sd./-NSSJ
07.09.2021

//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.
13/09/2021