



CMP(MD). No.2278 of 2021 in CRP(MD) No.2012 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction
Thursday, the Fifteenth day of June Two Thousand and Twenty Three
PRESENT

The Hon`ble Mrs.Justice R.THARANI
CMP(MD). No.2278 of 2021
in
CRP(MD) No.2012 of 2017

1.Kumaran Finance
Rep.Thro.its Manager S.Bose

...1 st Petitioner/Respondent

2.S.Padma Sethurajan

...Proposed 2nd petitioner/Respondent

Vs

N. Abdul Gafoor (Died)

1. A.Surya Begam

2 A.Samina Begum

3 A.Naina Mohammed

4 M.Nasrine Fathima

5 N.Doubique Mariam

6 A.Thahira Parveen

7 A.Ahamed

... Respondents

Prayer in CMP(MD). No.2278 of 2021:-

This Civil Miscellaneous petition is filed under order XXX Rule 4(1)r/w section 151 of CPC.,to implead the proposed 2nd petitioner as the 2nd respondent/2nd plaintiff in the above CRP(MD)No.2012 of 2017.

Prayer in CRP(MD) No.2012 of 2017:-

This Civil Revision petition is filed under Article 227 of Constituion of India, setting aside the order IA unnumbered/2019 directiong the trail Court to number the interlocutory application IA No.unnumbered/2011 in OS No.1019/1993 in the II Additional Sub Court, Madurai and to pass final order on merits in the interlocutory application with in time frame fixed by the Hon'ble High Court.



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ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.J.Suresh Kumar, Advocate for the Petitioner and Mr. V.Kannan, Advocate for the respondents, this Court made the following order:

“This petition has been filed by the petitioners to implead the proposed second petitioner as the second respondent / second plaintiff in C.R.P.(MD) No.2012 of 2017.

2.On the side of the petitioners, it is stated that originally, the suit in O.S.No.1019 of 1993 was filed by Kumaran Finance Company through its Manager before the II Additional Sub Court, Madurai, against the respondent and that suit was decreed on 29.01.1998. Against the decree, the respondent filed an appeal in A.S.No.877 of 1998 before this Court and the Appeal was dismissed with costs, on 08.11.2010. Subsequently, the Execution Proceedings in E.P.No.109 of 2011 was filed against the judgment debtors. During the pendency of the Execution Proceedings, the respondent filed a Civil Revision Petition before this Court in C.R.P.(MD)No.2012 of 2017. This Court has directed the respondent to deposit the principal amount in the Account of this Court and the order was complied with. During the pendency of the above said revision, the respondent has reported that the plaintiff / Firm was not in existence.

3.The Firm was closed in the year 2013. One Sethurajan and the petitioner herein were the first Directors of the Company. On 01.06.1996, one of the



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Directors viz., Sethurajan passed away and the present petitioner is the surviving Director of Kumaran Finance Company. As per the Companies Act, the petitioner is entitled to recover the debt from the third parties and hence, the petitioner is to be impleaded as the proposed second petitioner (second respondent in the main revision) and has to be permitted to continue the execution proceedings and prayed the petition to be allowed.

4.On the side of the respondent, it is stated that the petitioner has claimed only 2% as interest and that the trial Court has decreed the suit as prayed for. But, in the decree, instead of 2% interest, it was wrongly printed as 36% interest. The respondent has filed a petition before the trial Court to amend the decree, but, the trial Court returned the petition and the respondent filed a revision petition before this Court, which is pending. The plaintiff was the Manager of the Firm and this petitioner is not connected with the Firm and that the petitioner cannot be impleaded as the legal heir of her husband, since her husband is not a party, to the suit.

5.On the side of the respondent, it is further stated that the petitioner has filed a similar petition before the Execution Court and the petitioner filed this petition before this Court, which amounts to *res judicata* and prayed the petition to be dismissed. Filing an impleading petition in a proceeding pending before two Courts cannot be termed as *res judicat*. This contention of the petitioner is



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unsustainable.

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6.It is seen that the plaintiff is a Firm, by name, Kumaran Finance and the same was registered under the Companies Act and later Kumaran Financiers and Leasing Finance Private Limited was incorporated on 07.09.1994. The respondent has filed a copy of the Registration Certificate of the Firm. The present petitioner and some other persons, viz., Chandramathi, Kalyani were stated as the Partners of the Firm. The petitioner has filed a report filed by an Auditor, stating that one Sethurajan and the petitioner were the Directors of the Firm. It is further stated that the Firm ceases to exist from the year 2013. One of the Directors, viz. Sethurajan passed away on 11.06.1996. Registration Certificate of the Company was not filed by the petitioner.

7. Only when the petitioner is given an opportunity in the Civil Revision Petition, particulars regarding the Firm/ decree holder can be verified.

8.In the above circumstances, the petitioner is a necessary party to the proceedings and hence, this Petition is allowed. “

Sd/-

Assistant Registrar(CS-III)

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/08/2023

Sub Assistant Registrar(CS)



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+1 CC to M/s.J.SURESH KUMAR, Advocate (SR-9322[D] dated 03/08/2023)

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ORDER DATED : 15/06/2021

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CD PURPOSE

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CMP(MD). No.2278 of 2021
in
CRP(MD) No.2012 of 2017

Giving direction and etc.
as stated within.

AMS/23.08.2023 5P 2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023