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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 438 of 2019

Kamal Kumar Bhawasinka

..... Petitioner

Mr. A.Kejriwal, Advocate

-versus-

SMV Beverages Pvt. Ltd.

.... Opp. Party

Mr. N.P.Patra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.09.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Though this matter is listed for orders today, on the consent of learned counsel for the parties, the same is taken up for hearing and final disposal.
3. Petitioner in this CMP seeks to assail order dated 24th December, 2018 (Annexure-5) passed by learned 3rd Additional Civil Judge (Senior Division), Cuttack in CS No.3272 of 2014 , whereby an application under Order 1 Rule 10 CPC filed by Defendant / Opposite Party has been allowed.
4. Mr. Kejriwal, learned counsel for the Petitioner submits that the suit has been filed for recovery of amount from the Opposite Party/Defendant for supply of sugar and for other consequential reliefs. By allowing an application under Order XVIII Rule 1 CPC filed by the Plaintiff, the Defendant has been directed to begin hearing of the suit. The Defendant while leading evidence in the matter, filed an application under Order 1 Rule 10 CPC to implead one Laxmi Enterprisers, a

proprietorship firm as a party to the suit on the ground that it has purchased the sugar from said Laxmi Enterprisers and paid the consideration amount. As such, said laxmi Enterprisers is a necessary part to the suit. Considering the said application, learned trial Court rightly allowed the application under Order 1 Rule 10 CPC. Hence, this CMP has been filed.

4.1 Learned counsel for the Petitioner relied upon a decision in the case of ***Sudhamayee Pattnaik and others Vs. Bibhu Prasad Sahoo and others***, reported in 2022 SCC Online SC 1234, wherein Hon'ble Supreme Court held as under:-

“11. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the dominus (sic) litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

5. In that view of the matter, learned counsel for the Petitioner submits that the Court has power to implead a party to the suit *suo motu*. In absence of such a direction, the Plaintiff is *dominus litis* and he cannot be compelled to implead parties against whom he does not claim any relief. It is his submission that the Petitioner does not claim any relief against said Laxmi Enterprisers. Hence, the impugned order is not sustainable as said laxmi Enterprisers is neither a necessary nor a proper party

to the suit. Hence, he prays for setting aside the impugned order under Annexure-5.

6. Mr. Patra, learned counsel for the Opposite Party on the other hand submits that since the price of sugar supplied to it has been paid to said Laxmi Enterprisers from whom it has received the sugar, said Laxmi Enterprisers is a necessary party to the suit and in its (Laxmi Enterprises) absence, there cannot be any effective adjudication of the suit. Therefore, learned trial Court has not committed any error in passing the impugned order.

7. Upon hearing learned counsel for the parties and on perusal of case law cited by learned counsel for the Petitioner, this Court is of the considered opinion that the Plaintiff being *dominus litis* has the liberty to choose the party against whom it would claim relief. The necessary conclusion would be that non-joinder of party is at the risk of the Plaintiff. It cannot be compelled to implead parties unless the Court *suo motu* directs for implection of party. But in no circumstances, the Defendant can compel the Plaintiff to implead party to the suit. In the instant case, the Court has passed the order on an application filed by the Defendant. When the Plaintiff does not claim any relief against said Laxmi Enterprisers, it cannot be compelled to contest litigation against said party.

8. Accordingly, the impugned order is not sustainable in the eyes of law. Consequentially, the CMP deserves to be allowed, which I direct.

9. Since the suit is of the year 2014, learned trial Court shall make an endeavour for early disposal of the suit. Parties are directed to cooperate learned trial Court in that regard.

8. Interim order dated 30th April, 2019 passed in IA No.481 of 2019 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy