



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 17TH DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.3274 of 2021

in

C.S.No.46 of 2018

G.Sreevidhya,
D/o.S.Gnanaskandhan,
8A, Block II, Rani Meyammai Towers,
Raja Annamalaipuram,
Chennai 600 028.

...Plaintiff

Vs

1. M/s. Karismaa Foundations Pvt.LTd.
Rep.by its Managing Director,
Having its Registered Office at
No.34, 4th Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.

2. Rakesh P.Sheth,
Managing Director,
M/s.Karismaa Foundations Pvt.Ltd.,
Residing at 1C, 'Aura', I Main Road,
Shastri Nagar, Adyar,
Chennai 600 020.



3. Mrs.Roshini P.Sheth,
W/o.Rakesh P.Sheth,
Residing at 1C, 'Aura', I Main Road,
Shastri Nagar, Adyar,
Chennai 600 020.

4. Premsai Chandur,
S/o.Atchyut R.Chandur,
Residing at 1C, 'Aura', I Main Road,
Shastri Nagar, Adyar,
Chennai 600 020.

...Defendants

A.No.3274 of 2021

1.Rakesh P.Sheth,
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

Vs.

1.Ms.G.Sreevidhya,
D/o.S.Gnanaskandhan,
8A, Block II, Rani Meyammai Towers,
Raja Annamalaipuram,
Chennai 600 028.

... 1st Respondent / 1st Defendant



2.M/s. Karismaa Foundations Pvt.LTd.

Rep.by its Managing Director,

Mr.Rakesh P Seth

340, 1st South Main Road,

Kapaleeswarar Nagar,

Chennai 600 115.

... 2nd Respondent / 1st Defendant

3.Premsai Chandur,

S/o.Atchyut R.Chandur,

Residing at 1C, 'Aura', I Main Road,

Shastri Nagar, Adyar,

Chennai 600 020.

... 3rd Respondent / 4th Defendant

Application praying that this Hon'ble Court be pleased to strike out the name of the Applicants herein, the 2nd, 3rd Defendants in the abovementioned suit in C.S.No.46 of 2017 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.

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

The second and third defendants in the suit have filed this application under Order 1 Rule 10 CPC to be deleted from the array of parties in the suit.

2. The applicants contend that the dispute arises out of a construction agreement

between the plaintiff and the first defendant, and that the alleged liability in respect of



which the suit has been laid arises entirely out of the above mentioned construction agreement. By referring to the plaint, the applicants point out that the second defendant has been arrayed in the capacity of Managing Director of the first defendant and the third defendant in the capacity of the wife of the second defendant and Director of the first defendant. According to the applicants, the plaintiff has completely failed to make out a case to lift the corporate veil. Therefore, it is stated that the second and third defendants are not necessary parties to the suit notwithstanding the fact that the plaintiff seeks to obtain a decree jointly or severally against all the defendants.

3. The applicants rely upon the order passed in C.R.P.No.3584 of 2018 and, in particular, paragraphs 3 and 4 thereof to substantiate the contention that the joinder of persons who are neither necessary nor proper parties cannot be justified by falling back on *dominus litus*. The applicants point out that Crl.O.P.No.18099 of 2016, which was filed by the applicants herein against criminal proceedings instituted by the plaintiff, was allowed. The Special Leave Petition filed in respect thereof was also dismissed. As regards the cheques issued by the second defendant, it is stated that the plaintiff has not

filed a case under Section 138 of the Negotiable Instruments Act, 1891 in respect
<https://hcservices.ecourts.gov.in/hcservices/>

thereof. The applicants also state that the second and third defendants are not proper



parties and that all issues arising under the suit may be adjudicated effectively without their presence.

4. On the contrary, the respondent / plaintiff submits that the second and third defendants are both necessary and proper parties. In support of such contention, the plaintiff draws reference to paragraphs 3, 6, 10, 11, 16 and 17 of the plaint. With particular focus on paragraph 17, the plaintiff contends that the allegation is that the second to 4th defendants induce the plaintiff to part with money and enter into the construction agreement in the name of the first defendant. The plaintiff also points out that these defendants undertook to repay the money and, are, therefore, personally liable for the suit claim. The plaintiff relies upon cheques issued by the second defendant on 31.07.2015, 31.08.2015 and 30.09.2015.

5. By way of a brief rejoinder, the applicants point out that the cheques were issued under coercion and that the allegation of fraud by the plaintiff was rejected in CrI.O.P.No.18099 of 2016.



6. In an application to delete parties, the applicant is required to establish that the said parties are neither necessary nor proper parties to the action. A necessary party is a party in whose absence the decree prayed for cannot be granted and a proper party is a party whose presence is necessary for the effective adjudication of all issues which arise for consideration in the action. In the case at hand, the plaintiff has levelled allegations of pre-contractual misrepresentation, *inter alia*, by the second and third defendants. More importantly, the plaintiff has stated that the second and third defendants undertook to repay amounts due and payable under the construction agreement, and that the second defendant issued cheques in his personal name towards discharge of liability. The relevant cheques are on record and indicate *prima facie* that the cheques were issued in the name of the second defendant. Even as regards the third defendant, there are allegations that such third defendant made misrepresentations and that such misrepresentations were the basis for the plaintiff to enter into the construction agreement. Needless to say, the burden of proof is on the plaintiff to establish these allegations. However, the proof of such allegations would have to await trial.



7. At this juncture, the applicants have failed to establish that they are neither necessary nor proper parties to the suit. Consequently, the present application is liable to be rejected. Hence, A.No.3274 of 2021 is dismissed without any order as to costs.

Sd./-SKRJ.

17/02/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 22/02/2022