



WEB COPY



Application Nos.2547 & 2548 of 2021
in C.S. No.297 of 2020
(Comm.Suits)

N.ANAND VENKATESH,J.

These applications have been filed by Small Industries Development Bank of India (SIDBI) to implead themselves as proposed 3rd defendant in the suit and to grant them leave to defend the suit in a representative capacity on behalf of the joint lender forum.

2.Heard Mr.E.Omprakash, learned Senior Counsel for applicant, Mr.P.S.Raman, learned Senior Counsel for R 1, Mr.Raghul M.Shankar, learned counsel for R 2 and Mr.Prashant Rajagopal, learned counsel for R 3.

3.The 1st respondent/plaintiff filed a suit against the 2nd and 3rd respondents/1st and 2nd defendants for recovery of a sum of Rs.9,60,68,603.83/- with interest. The suit was filed as a summary suit under Order XXXVII of CPC r/w the relevant rules of the Original Side Rules of the Madras High Court. The defendants filed applications in A.Nos.43 and 332 of 2021, seeking leave to defend the suit. These applications were taken up for hearing and after hearing both sides, this Court passed a detailed order on 20.04.2021. The operative portion of the said order is extracted hereunder:

24.On applying the above principle laid by the Hon'ble Apex Court to the instant case, this Court is of the view that the defendants in this case fall under last category. The defence is illusory and practically moonshine, but to enable



WEB COPY

the first defendant to try to prove the defence, leave is granted on condition.

The defendants jointly or severally shall deposit a sum of Rs.10,00,00,000/- (Rupees ten crores only) to the credit of the suit account in C.S.(Comm.)No.297 of 2020 within 4 weeks from the today. On such deposit, the written statement shall be taken on file for further consideration. In case the defendants fail to deposit the said amount, they shall forfeit the right to defend the case. The suit shall proceed to the next stage.

4.It is brought to the notice of this Court that the defendants failed to deposit the sum of Rs.10,00,00,000/- (Rupees ten crores only) as directed by this Court and hence both the defendants will forfeit their right to defend the case. The legal consequence of the order would be that the suit itself should be decreed in favour of the plaintiff as prayed for.

5.After the orders were passed in the applications, the applicant in the present applications viz., (SIDBI) filed O.S.A.(CAD).Nos.21 and 22 of 2022. The appeals were disposed of by the Hon'ble First bench by an order dated 06.07.2021. The relevant portions in the order are extracted hereunder:

"5.Though leave was granted to the appellant to prefer the appeal on the prima facie view taken that the appellant may have been a person aggrieved by the order impugned directing the second defendant to furnish security in favour of the plaintiff, it does not appear that there is either any law or any agreement obliging the plaintiff to confine its attempt to recover its dues only by way of a joint action with the other creditors of the first



WEB COPY

defendant company. Accordingly, since it was open to the plaintiff to take appropriate steps in accordance with law to realize its dues and the plaintiff has sought to do so by instituting the present suit in this Court, the institution of the suit or any orders obtained in such suit cannot be said to be matters by which the appellant can be aggrieved or any cognizance of the appellant's objection in such regard need to be taken.

6.The judgment and order impugned dated April 20, 2021 does not call for any interference at the behest of the appellant. However, the appellant says that the appellant may apply for leave to intervene in the suit or to be added as a defendant therein. It will be open to the appellant to make such application and the same may be considered by the trial Court in accordance with law and uninfluenced by any observation contained in the present order.

7.In view of the above, the issue as to whether the appeal itself is maintainable under Section 13 of the Commercial Courts Act, 2015 is not specifically addressed.

6.Pursuant to the above order, the present applications have been filed by SIDBI, seeking for impleading themselves as the 3rd defendant in the suit and to permit them to defend the suit in a representative capacity on behalf of the joint lender forum.

7.The case of the applicant is that they are the lead Bank representing the financial creditors of the 1st defendant Company. According to the applicant, there were few members of the consortium of lenders, who had given their express consent to act



WEB COPY

in terms of the resolution of the joint lenders forum that was formed to jointly make their claim against the 1st defendant Company and to recover the amounts due and payable to them. The further case of the applicant is that the plaintiff in the present suit has individually proceeded further to make their claim against the defendants and recover the money and thereby deprive the other creditors of their rightful dues that are payable by the 1st defendant Company. It is stated that apart from the applicant, there are other lenders who have a specific charge on the receivables of the 1st defendant Company and they have a priority of charge and it was resolved in the joint lender forum to receive the amount and put it in an Escrow account for an equitable distribution among the creditors. The further case of the applicant is that the Reserve Bank of India had issued certain guidelines in this regard in the year 2016 and subsequently it was withdrawn.

8. The main purport of the argument by the learned Senior Counsel appearing on behalf of the applicant is that there must be some mechanism to ensure that one creditor does not knock off the entire receivables and thereby deprive the rightful claims of other creditors who have a charge on those receivables. The learned Senior Counsel submitted that the Court even while deciding the suit, must direct the plaintiff to state as to whether there is any pre-existing charge and in which case, the court at the time of passing the decree can make it clear that the recovery of amount by the plaintiff in execution of the decree will be subject to such pre-existing charge on the receivables that has been created in favour of the other financial institutions.



WEB COPY

9. In the considered view of this Court, the plaintiff has an independent claim over the defendants and this Court while passing orders in A.Nos.43 and 332 of 2021, has categorically found a *prima case* in favour of the plaintiff and also found that the defendants were attempting to raise an illusory and moonshine defense. That is the reason why the defendants were directed to deposit a sum of Rs.10,00,000.00/- (Rupees ten crores only) in order to give them an opportunity to defend the case. Once the defendants failed to comply with this condition, the consequence will be that their right to defend the case will stand forfeited and the suit will have to be decreed in favour of the plaintiff. At this stage, the grounds that have been raised by the applicant in the present applications will go beyond the scope of the relief sought for in the suit. Admittedly, the plaintiff is not a member of consortium of lenders and therefore, the plaintiff is not bound to make all the other lenders as a party in the present suit. It is enough if the plaintiff works out their right for the recovery of money that is due and payable by the defendants. The plaintiff is not bound by any agreement nor is the plaintiff bound by any law to bring in the other lenders as a party to the proceedings. In any case, while deciding the claim made by the plaintiff, the claim of the other creditors against the 1st defendant, is not a relevant factor to be considered in the present suit. The plaintiff also cannot be compelled to add anyone as a party to the suit since the plaintiff is the *dominus litus*.

10. The priority of charge on the receivables is not an issue that can be gone into in the present suit. In the present suit, the plaintiff has merely sought for recovery of



money from the defendants. If at the time of execution of the decree, if any one has any priority of charge, that may be an issue to be considered by the Execution Court at that point of time. That exercise need not be undertaken at this stage in the present suit.

11. In the considered view of this Court, the applicant is neither a necessary party nor a proper party in the suit and hence, there is no ground made out for adding the applicant as the proposed 3rd defendant in the suit. In view of the fact that the applicant is not a necessary or proper party in the suit, there is no scope for granting any leave to the applicant to defend the suit in their representative capacity on behalf of the joint lender forum.

12. This Court does not find any merits in these applications and accordingly, both the applications stand dismissed. Considering the facts and circumstances of the case, there shall be no orders as to costs.

04.01.2022

Internet: Yes
KP



WEB COPY



N.ANAND VENKATESH, J.

KP

Application Nos.2547 & 2548 of 2021
in C.S. No.297 of 2020
(Comm.Suits)

04.01.2022