



WEB COPY



Application No.3461 of 2021
in
C.S.No.466 of 2013

N.ANAND VENKATESH,J.

This application has been filed by the plaintiff for the relief of amendment of plaint by substituting the name of the plaintiff and by adding certain averments in the plaint as set out at paragraph 18 of the affidavit filed in support of the application.

2.Heard Mr.Raja Kalifulla, learned Senior Counsel for the applicant and Mr.Thriyambak J.Kannan, learned counsel for the respondents.

3.The applicant initially filed the suit against three defendants seeking for the relief of recovery of money along with interest. The applicant was under the impression that the 1st respondent and its directors are liable to pay the money. Thereafter, the applicant realized that the present 2nd defendant merged with the 1st defendant and hence filed an application to implead the present 2nd defendant as a party to the suit. A.No.4432 of 2016, was allowed by this Court by an order dated 07.11.2016 and accordingly, the present 2nd defendant became a party to the suit. Thereafter, the original 2nd and 3rd defendants in the suit were deleted from the array of defendants by an order dated 11.10.2017. Thus, there are two defendants only who are presently contesting the suit.



WEB COPY

4.It is also seen from records that the 1st defendant filed an application in A.No.8146 of 2018 for a summary judgment. This application came to be dismissed by an order dated 26.02.2020. This application was filed by the 1st defendant on the ground that they have nothing to do with the transaction and the directors of the Company were already deleted from the array of parties and the relief, if any on the applicant can be only as against the present 2nd defendant to whom the goods were supplied.

5.This Court while dealing with the application found that the issue as to whether the 1st defendant is a part of the group and is the sister concern of the present 2nd defendant, is a matter to be gone into only at the time of final disposal of the suit and it cannot be decided in the summary judgment application. For proper appreciation, paragraph 12 and 13 of the order are extracted hereunder:

12. On the face of the document relied by the plaintiff, the contract was between the plaintiff and the 2nd defendant M/s.Secure Energy Services Inc. Mr.Rene Amirault and Mr.Mike Curran are President and Vice President, who were the persons who have been communicating with the plaintiff and M/s.Alliance Energy Service Limited and they are also President and Vice President of M/s.Secure Energy Services Inc. Based on certain materials, the plaintiff initially had an impression that M/s.Alliance



WEB COPY

Energy Service Limited has got merged with M/s.Secure Energy Services Inc. By virtue of the share purchase agreement between the M/s.Secure Energy Services Inc and Marquis Alliance Energy Group Limited, the plaintiff was under the initial impression that M/s.Alliance Energy Service Limited has been merged with M/s.Secure Energy Services Inc. So he has filed the suit as against the M/s.Secure Energy Services Inc indicating they were formerly known as M/s.Alliance Energy Service Limited. Having come to know that there was no merger, he has impleaded M/s.Alliance Energy Services Inc. It does mean that M/s.Secure Energy Services Inc is unnecessary party. Since the transformation of the Company which has purchased goods and fail to pay the value was not certain for the plaintiff, he has impleaded both the companies.

13. On the face of the record, Suit cannot be considered as a misjoinder of party at this stage. The documents and evidence to be relied by the plaintiff, may lead to piercing the corporate veil, then the 1st defendant's company may be liable for the suit claim. In the opinion of this Court, it is prematured to hold the 1st defendant is not a necessary party.

6.The applicant/plaintiff has come up with the present application mainly on the ground that they came to know about the corporate organization structure of the defendants only when the earlier application for passing summary judgment was



filed by the 1st defendant. It is further stated that on going through the organization structure, the applicant came to know that M/s.Secure Energy Services, owned 100% shares of Marquis Alliance Energy Group Inc. Alberta and Marquis Energy Services owned and possessed 100% shares of Marquis Alliance Energy Group USA Inc. (Delware).

7.In view of the above, the applicant alleges that the 1st defendant has acquired Marquis Alliance Energy Group USA Inc., along with 14 subsidiary Companies including the present 2nd defendant. According to the applicant, the 1st defendant attempted to portray a false picture as if, they have nothing to do with the 2nd defendant and this stand taken by the 1st defendant goes contrary to the organization structure. Hence, the applicant wants to incorporate the necessary averments in the plaint to substantiate their claim.

8.The 1st defendant has filed a counter affidavit stating that the amendment sought for by the applicant will change the cause of action of the suit and that the applicant is attempting to come up with a new case. Therefore, according to the 1st defendant, there are absolutely no merits in the application and the applicant is only attempting to make a roving enquiry to find out facts and it goes beyond the scope of an application for amendment of plaint.



WEB COPY

9.The applicant who is the plaintiff is the dominus *litis* and some liveage has to be given to the applicant to prove their case. The applicant has detected certain new facts after the organization structure got exposed during the pendency of the earlier application for summary judgment. While considering the application, this Court cannot go into the merits of the claim made by the applicant or its sustainability. The plaintiff is now making the claim against both the defendants and unless the plaintiff is able to lay a foundation through pleadings with respect to the relationship between the defendants, it will not be possible for the plaintiff to sustain the claim through other materials while tendering evidence. In short, the plaintiff has to necessarily identify and fix the entity against which the relief can be sought for. Hence, an opportunity must be given to the plaintiff by permitting the plaintiff to amend the plaint.

10.The 1st defendant will always get an opportunity to deal with these averments sought to be added in the plaint, by filing an additional written statement. Therefore, no prejudice will be caused to the 1st defendant if this application for amendment of plaint is allowed at this stage. This is more so since the suit is at the pre-trial stage and even issues have not been framed.

11.Insofar as the amendment sought for to substitute the name of the plaintiff, sufficient reason has been assigned in the affidavit filed in support of the application and this amendment can also be allowed.



WEB COPY



12.In the result, this Court is inclined to allow this application for amendment of plaint. Considering the facts and circumstances of the case, there shall be no order as to costs.

12.01.2022
1/2

KP

Internet: Yes



WEB COPY



N.ANAND VENKATESH, J.

KP

Pre-Delivery Order
in Application No.3461 of 2021
in C.S.No.466 of 2013

Orders Reserved on 10.01.2022

Pronounced on 12.01.2022