



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

A.No. 4536 of 2021

in

C.S.No.302 of 2020

C.S.No.302 of 2020:-

RS Yarns & Power Pvt. Ltd.

Represented by its Director Mr.S.Babu

40(1) S.V.Colony East, 9th Street,

PN Road, Tirupur – 641 602.

...Plaintiff

-Vs-

1.M/s EDM I India P.Ltd.

Represented by its Director Mr.Sukant Behera,

M-3, 9th Street, Dr.VSI Estate,

Thiruvanmiyur, Chennai – 600 041.

2.M/s EDM I Limited,

Represented by its Director Mr.How New Sang,

47, Yishun Industrial Park A,

Singapore – 768 724.

... Defendants

A.No. 4536 of 2021:-

<https://hcservices.ecourts.gov.in/hcservices/>

M/s EDM I Limited,



Represented by its Director Mr.How New Sang,
47, Yishun Industrial Park A,
Singapore – 768 724. ...Applicant / 2nd Defendant

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Vs.

1.RS Yarns & Power Pvt. Ltd.
Represented by its Director Mr.S.Babu
40(1) S.V.Colony East, 9th Street,
PN Road, Tirupur – 641 602. ... 1st Respondent / Plaintiff

2.M/s EDM I India P.Ltd.
Represented by its Director Mr.Sukant Behera,
M-3, 9th Street, Dr.VSI Estate,
Thiruvanniyur, Chennai – 600 041. ... 2nd Respondent / 1st Defendant

Application praying that this Hon'ble Court be pleased to strike out the name of
the applicant/2nd defendant in the above C.S.(Commercial) No.302 of 2020.

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

This application has been filed by the 2nd defendant to strike out the name of
the 2nd defendant in the suit.

2.The 1st respondent / plaintiff has filed the present suit seeking for the relief
of recovery of money. The case of the 1st respondent is that in the course of



transaction, the 1st respondent/ plaintiff entered into a Memorandum of Understanding dated 20.03.2019 with the 2nd respondent / 1st defendant for supply of meters and the grievance of the 1st respondent is that the 2nd respondent / 1st defendant did not supply the meters after having received the payments from the 1st defendant / plaintiff.

3.The applicant / 2nd defendant has filed the present application mainly on the ground that there is absolutely no privity of contract between the applicant and the 1st respondent and they are in no way involved in the transaction and even though, the 2nd respondent / 1st defendant is a subsidiary company of the applicant, that does not in any way make the applicant liable under the transaction, since the 2nd respondent / 1st defendant is an independent entity.

4.A counter affidavit has been filed by the 1st respondent /plaintiff and it has been explained in the counter affidavit as to how the applicant is a proper party in the present suit. The 1st respondent / plaintiff has sought for the dismissal of this application.

5.Heard the learned counsel for Mr.M.Santhanaraman and M.Surya senthil for M/s.Surana and Surana,learned counsel for 1st respondent and Mr.T.V.Suresh Kumar, learned counsel for 2nd respondent.



6. A careful reading of the plaint shows that the entire transaction is as between the 1st respondent / plaintiff and the 2nd respondent / 1st defendant. Admittedly, the 2nd respondent is the subsidiary company of the applicant and it is stated that the applicant holds more than 99% of the shares in the 2nd respondent / 1st defendant company. It is now too well settled that a holding company and a subsidiary company are independent entities in the eye of law and a company cannot be added as a party just because it is the holding company without anything more.

7. The 1st respondent / plaintiff has come up with a specific stand that the 2nd respondent / 1st defendant went against the terms of MOU and refused to supply materials. One important reason that was given by the 2nd respondent / 1st defendant is that the 1st respondent / plaintiff was attempting to supply materials to Iran and such supply of materials to Iran goes against the rules and regulations at Singapore, where the holding company is having its registered office. One of the documents that has been relied upon by the 1st respondent / plaintiff shows that the 2nd respondent / 1st defendant informed the plaintiff through email dated 20.07.2019 that EDM I is owned by Osaki (a Japanese Company) and as per the available law and regulation, EDM I cannot transact with the companies situated at Iran. Even in the averments made in

the plaint, it is stated that it is the 2nd defendant which directed the 1st defendant not



to supply the meters and the 2nd defendant refused to respond to any of the communication made by the plaintiff.

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8. This Court has to see if the applicant / 2nd defendant is a necessary and / or proper party in the present suit. The scope of order I Rule 10(2) of CPC was gone into by the Hon'ble Supreme Court and the Hon'ble Supreme Court explained as to who is a necessary party and a proper party. Useful reference can be made to the judgement of the Hon'ble Supreme Court in ***[Mumbai International Airport (P) Ltd., Regency Convention Centre and Hotels P Limited and others]*** in 2010 7 SCC 417. The relevant portion in the judgement is extracted hereunder :-

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a



against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

9. In the considered view of this Court, the 2nd defendant is not a necessary party and even in the absence of the 2nd defendant, an effective decree can be passed in the present suit as against the 1st defendant. Therefore, the only other issue that requires the consideration of this Court is to see if the applicant / 2nd defendant is a proper party in the present suit.

10. A proper party is a party whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters and dispute in the suit. The plaintiff is the dominus litis who can choose to add any one as a party to the suit. While adding the party to the suit, the plaintiff must justify the same by substantiating that the concerned party is either a necessary or a proper party. If the party does not fall within either of these categories, the party has to be necessarily struck off from the suit.



11. In the present case, if the 1st defendant had merely stated that the plaintiff had acted beyond the terms of the MOU and that is the reason why the payment was not made to the plaintiff, there would have been absolutely no justification to add the 2nd defendant as a party to the suit. However, the 1st defendant apart from taking such a stand, has also taken a further stand to the effect that the 2nd defendant which is the holding company has directed the 1st defendant not to permit the plaintiff to supply any materials to Iran, since it goes against the rules and regulations.

12. Mr. Sukant Behera, Director of the 1st defendant, is also the Senior Vice President of the 2nd defendant. In that capacity, the reference is made to the defendants only as EDM I group and this very person through email dated 20.07.2019 talks about the 2nd defendant being owned by the Japanese entity Osaki and the corporate policy of not allowing the supply of materials to Iran. In view of this reason, the plaintiff has thought it fit to add the 2nd defendant in the suit, since the plaintiff thinks that the 2nd defendant is a proper party.

13. The presence of the 2nd defendant will certainly enable this Court to

completely, effectively and adequately adjudicate upon the terms of the MOU dated



20.03.2019. Even if ultimately a decree is not passed against the 2nd defendant, the presence of the 2nd defendant as a party will enable this Court to understand about the scope of the corporate policy, which prevents the plaintiff from supplying the materials to Iran. This is in addition to determining the basic issue as to whether the plaintiff violated the terms of MOU and which justified the 1st defendant not to supply any materials as per the MOU.

14. In view of the above discussion, this Court holds that the 2nd defendant is a proper party in the present suit and the presence of the 2nd defendant is required for this Court to completely and effectively adjudicate upon a matters in dispute in the suit.

15. In the result, this application is dismissed and considering the facts and circumstances of the case, there shall be no order as to costs.

Sd./-NAVJ.

12/01/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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