



C.R.P(PD).No.1746 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	14.06.2022
PRONOUNCED ON	:	22.08.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD) No.1746 of 2017
and C.M.P.No.8266 of 2017

Govind Kumar

.. Petitioner

Versus

1) Ramesh Kumar S.Bhat
rep. by his power Agent, Bharat H.Prohit

Polaram H.Prohit (Deceased)

2) M/s.Mahalakshmi Enterprises,
Rep. by its partner Polaram H.Prohit,
No.145-P, NSC Bose Road,
Chennai 600 079

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.03.2017 passed in I.A.No.9024 of 2016 in O.S.No.14657/2010 on the file of XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.Prabhakaran

For R-1 : No Appearance

* R2- Died



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ORDER

Challenging the order dated, 15.03.2017 passed in I.A.No.9024 of 2016 in O.S.No.14657/2010 on the file of XVII Assistant City Civil Curt, Chennai, the third respondent therein has filed the present Civil Revision Petition.

2. The brief facts required for the disposal of the present Civil Revision Petition are as follows:-

2.1. O.S.No.14657/2010 was filed by the first respondent herein, represented by his power agent Bharat H.Prohit, seeking for a direction to the second respondent/ Polaram H.Prohit for rendition of accounts with respect to a partition firm M/s.Mahalakshmi Enterprises, which was shown as the first defendant, represented by partner Polaram H.Prohit.

2.2. Meanwhile, an application in I.A.No.11387 of 2013 was filed by the first respondent herein, to bring on record the proposed defendants; Govind Kumar and Kalyan Singh as defendants 3 & 4, who are the legal heirs of the deceased second respondent/Polaram H.Prohit and the said application was dismissed on 06.11.2013. Thereafter, I.A.No.4913 of 2014 was filed by the



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first respondent herein, seeking to appoint an Advocate Commissioner to inspect, verify, collection of accounts books and other records pertaining to the business and take down the profit and loss account, whereby the Court below by allowing the application, had appointed an Advocate Commissioner for such purpose. The Advocate Commissioner, vide interim report dated 11.10.2014 had stated that the second respondent's business viz., M/s.Mahalakshmi Enterprises is now run by Govind Kumar, son of the deceased second respondent/Polaram H.Prohit.

2.3. Based on the interim report filed by the Advocate Commissioner, the Court below had directed the first respondent herein to take steps for impleading necessary party. Accordingly, I.A.No.9024 of 2016 was filed under Order I Rule 10 of the Civil Procedure Code to implead the petitioner herein as the third defendant in the suit in O.S.No.14657 of 2010 and the learned XVII Assistant Judge, City Civil Court, Chennai had allowed the application vide order dated 15.03.2017. Aggrieved against the same, the proposed third defendant/petitioner herein has approached this Court by way of this civil revision petition.

3. According to the learned counsel for the revision petitioner, the suit in



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O.S.No.14657 of 2010 was filed by the first respondent herein for the rendition of accounts with regard to the affairs of the second respondent's firm, wherein prior to the dissolution of the said firm, the first respondent and the petitioner's fathers were partners and both carried on the business and all the rights and liabilities were divided between them and the same was also reduced into writing which document was exhibited on the side of the second respondent.

3.1 According to the petitioner, the first respondent has filed a civil suit with regard to the affairs of the partnership firm against the partners and on demise of the partner party to the suit, the cause of action does not survive on the legal heirs of the deceased partner.

3.2. The learned counsel for the petitioner further drew the attention of this Court to the order made in I.A.No.11387 of 2013, dated 06.11.2013, for impleading the legal heirs of the deceased second respondent, which came to be dismissed by the Court below. Therefore, the revision petitioner prayed to set aside the order, dated 15.03.2017 passed in I.A.No.9024 of 2016 in O.S.No.14657/2010 on the file of XVII Assistant City Civil Court, Chennai since the petitioner has nothing to do with the present suit and also that the



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first respondent herein has no authority to implead the revision petitioner as the third defendant in O.S.No.14657 of 2010.

4. There is no representation for the respondent.

5. I have heard the submissions advanced by the learned counsel for the revision petitioner and also gone through documents placed before this Court.

6. Perusal of the order made in I.A.No.9024 of 2016 in O.S.No.14657/2010 would show that the learned Judge had relied on the report of the Advocate Commissioner for allowing the application for impleading the revision petitioner as third defendant in O.S.No.14657/2010, which in the considered opinion of this Court is erroneous. The Court below should not come to a conclusion, based on the Advocate Commissioner's report for impleading a particular individual as a party to the suit.

7. Further, when an application under Order 22 of the Civil Procedure Code has been dismissed, then, the same relief cannot be sought by way of filing an alternate application under Order 1 Rule 10(2) of the Civil Procedure Code. The scope of Order 22 of the Civil Procedure Code is to bring on



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record the legal representatives. Even under Order 22, there is a provision to bring on record assignees of a right. That application appears to have been dismissed. Hence, taking recourse to Order 1 Rule 10(2) of the Civil Procedure Code, to implead the very same party, the petition is filed and it has been allowed, which cannot withstand the scrutiny of this Court. Therefore, the order, dated 15.03.2017 passed in I.A.No.9024 of 2016 in O.S.No.14657/2010 on the file of XVII Assistant City Civil Court, Chennai warrants interference of this Court and the same is set aside. Accordingly, this Civil Revision Petition stands Allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2022

Index : Yes / No

Internet : Yes

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To:

1.The XVII Assistant City Civil Court,
Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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Pre-Delivery Order made in
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