



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.Nos.264 & 265 of 2017

and

C.M.P.Nos.1167 & 1168 of 2017

M/s.Trent Limited
Trent House, C-60, G-Block,
Next to City Bank,
Bandrakurla Complex, Bandra East,
Mumbai.
Rep. by its Authorized Signatory
Krutika Swamy

... Petitioner / Petitioner / Defendant (in both CRPs)

Vs.

1.M/s.Dior Properties and Investments Private Limited
No.111/2, Sterling Road,
No.2C, Easdale Enclave,
Nungambakkam,
Chennai – 600 034.
Represented by its Director Mr.Vikram Nataraj

... Respondent/Respondent/Plaintiff

2.Natraj Ramaiah

... Respondent / Respondent / Proposed Third Party
(in both CRPs)



Prayer in CRP (PD) No.264 of 2017 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.11.2016 in I.A.No.197 of 2015 in O.S.No.4238 of 2015 passed by the XVIII Additional City Civil Court, Chennai.

Prayer in CRP (PD) No.265 of 2017 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.11.2016 in I.A.No.5 of 2016 in O.S.No.4237 of 2015 passed by the XVIII Additional City Civil Court, Chennai.

For Petitioners	..	Mr.P.Giridharan (in both CRPs)
For R1	..	Mr.Vinod Kumar (in both CRPs)
For R2	..	Mr.Ramaswamy Meyyappan for Rajkumar Jhabakh (in both CRPs)

COMMON ORDER

Though both the Civil Revision Petitions arise from orders passed in interlocutory applications in two separate suits, since arguments were advanced in common by the learned counsels, it would only be appropriate that a common order is passed in both the Civil Revision Petitions.



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2.It is also to be noted that the parties at lis are also the same and in both the suits, also sue in the same capacity. The interlocutory applications have also been filed by the defendants seeking practically the same relief and having suffered an order of dismissal in the said application, the defendant in both the suits who is actually the same Limited Company has now come before this Court by way of these two Revision Petitions.

3.CRP.No.264 of 2017 arises out of an order in IA.No.197 of 2015 in O.S.No.4238 of 2015 which suit is pending on the file of the XVIII Additional City Civil Court, Chennai. CRP.No.265 of 2017 had been filed questioning the order in I.A.No.5 of 2016 in O.S.No.4237 of 2015 which suit is also pending on the file of the XVIII Additional City Civil Court.

4.O.S.No.4238 of 2015 had been filed by the respondent / M/s.Dior Properties and Investments Private Limited against the revision petitioner herein M/s.Trent Limited, seeking a judgment and decree for a sum of Rs.24,79,444/- together with interest, towards, alleged arrears of rent payable from September 2013 and thereafter, for maintenance



charges from June 2014. O.S.No.4237 of 2015 had been filed by the same plaintiff against the same defendant seeking a judgment and decree for payment of a sum of Rs.24,33,500/- together with interest towards costs incurred by the plaintiff towards repair and restoration work on the premises which had been leased out to the defendant. Both the suits relate to the premises which had been leased out and which is at basement and ground floor of the building “Apex Plaza”, No.3, Nungambakkam High Road, Nungambakkam, Chennai.

5. Written statements have been filed by the revision petitioners and if issues are framed by the learned Trial Judge, the suit can be taken for trial.

6. At that stage, the revision petitioner / defendant filed I.A.No.197 of 2015 in O.S.No.4238 of 2015 and I.A.No.5 of 2016 in O.S.No.4237 of 2015 and both the applications had been filed taking advantage of Order I Rule 10(2) of CPC seeking to implead a third party as a further defendant in the two suits.



7.A peep into the background facts reveals that the original lease deed had been entered into by the plaintiff in the suit with the partnership firm / M/s.Landmark. Quite interestingly, the lessor which was the plaintiff was a company registered under the Companies Act, 1956 was represented by its Managing Director Nataraj Ramaiah and the lessee / Landmark, Partnership Firm was represented by its partner Hemalatha Ramaiah / wife of the representative / Managing Director of the lessor.

8.Thereafter, the lessee / partnership firm Landmark under went metamorphosis. It was converted into a further partnership firm by bringing in other partners together and then by an order of the Bombay High Court, was converted to a Private Limited Company. That Private Limited Company is the revision petitioner herein / defendant in the suit.

9.The lease continued and on termination the leased out premises was handed over back to the lessor. The lessor was not satisfied in taking back the possession and had instituted two suits, one for recovery of rental arrears and another one for the expenses incurred in making the aforesaid premises once again marketable and in a position to be put to commercial use. In the said two suits, the revision petitioner as aforesaid



filed applications under Order I Rule 10(2) of CPC seeking to bring on record another defendant.

10.It must be kept in mind that the said application was not filed by the plaintiff, but by the defendant. It is normally construed that the plaintiff as the dominant litus has the option to chose against whom the suit should be filed with respect to the issues raised.

11.If the plaintiff, had not joined a necessary party, then the consequences of non-joinder would be fatal to the suit. These are provision which are in built in the Civil Code of Procedure. The mis-joinder of party may not be fatal. Therefore, it is generally for the plaintiff to decide the parties against whom the relief sought in the plaint can be claimed.

12.In the instant case, the plaintiff in the two suits / respondent herein had taken a conscious decision to implead, the revision petitioner alone as a sole defendant in the suit. However, taking into consideration the fact that when the lease was originally entered, the said Natraj Ramaiah represented the lessor / respondent herein / plaintiff, in his



capacity as Managing Director and later there were so many transformation, which took place over the lessee / revision petitioner, the revision petitioner filed the aforesaid application to implead the said Natraj Ramaiah as a party defendant in the two suits. The two applications in the two suits came to be rejected by the learned Trial Judge necessitating the filing of the present revision petitions.

13.Heard arguments advanced.

14.It is the contention of Mr.P.Giridharan, learned counsel for the revision petitioner that the presence of Natraj Ramaiah would be absolutely necessary to decide the issues in the suit. One of the primary issue to be decided in O.S.No.4238 of 2015 is whether there are rental arrears due and payable by the revision petitioner. The primary issue to be decided in O.S.No.4237 of 2015 would be whether when the premises was handed back, it was in a habitable condition and whether further expenditure were incurred by the plaintiff in the suit, to put the premises for commercial use.



15. But these issues are further widened by Mr. P. Giridharan, learned counsel who stated that Natraj Ramaiah who is sought to be impleaded was the Managing Director and as Director of the Private Limited Company, having entered into a commercial transaction, which commercial transaction is now put to test in both suits, it would be appropriate that as a necessary party he is impleaded to answer the various allegations made by the plaintiff.

16. It was under these circumstances, that applications under Order I Rule 10(2) CPC was filed by the defendant claiming that though the plaintiff was the dominant litus, still to decide the issues in their proper perspective and to examine the role of Natraj Ramaiah in all these transactions namely, the conditions with respect to the lease, the rental arrears and damages and also with respect to his individual role as Director / Managing Director, he is a necessary and proper party in the two suits.

17. The learned Trial Judge had taken a view that the parties can very well call him as witness and thereafter refused to take into account the provisions under Sections 297 and 300 of the Companies Act, 1956.



18.It was insisted by Mr.P.Giridharan, that if a holistic view is taken in relation to the aforementioned provisions under the Companies Act, then it would be evident that Natraj Ramaiah would be a necessary party to the suits and he should be added as a defendant and that issues raised in the suits can be decided only when he is present as a litigant in the two suits.

19.In this connection, Mr.P.Giridharan while presenting a series of judgments, placed specific reliance only on **2007 (2) CTC 73 : 2007-2-LW810, (2006) 4 MLJ 593, S.Krishnan v. Rathinavel Naicker and Others**, wherein, a learned Single Judge of this Court (V.Ramasubramanian, J. as his Lordship then) while considering a application under Order I Rule 10(2) CPC had laid the guidelines to be examined to determine whether the party who is sought to be impleaded should actually be impleaded as a party to the lis.

“16.A party to a ligation is not entitled to use the provisions of Order I, Rule 10(2), CPC to implead a person, just for the purpose of eliciting a statement from him, in whatever form, so as to make use of the same as a piece of evidence. As observed by this Court in Somasundaram Chettiyar and Ors. v. Balasubramanian MANU/TN/0121/1998 : (1998) IIMLJ 562, a person does not become a necessary



party merely because he has some evidence relevant to the case on hand. A necessary witness is different from a necessary party.

17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories-

(a) If without his presence no effective and complete adjudication could be made;

(b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;

(c) If there is a cause of action against him;

(d) If the relief sought in the suit or other proceedings is likely to be made binding on him;

(e) If the ultimate outcome of the proceedings is likely to affect him adversely;

(f) If his role is really that of a 'necessary witness' but is sought to be camouflaged as a 'necessary party';”

20. It is insisted by Mr.P.Giridharan, learned counsel, that Natraj Ramaiah qualifies the first three tests above whereby, without his presence no effective and complete adjudication could be made and his presence is required for effective adjudication and that actually the plaintiff has a cause of action as against him also.



21.I have carefully considered the arguments advanced.

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22.It must be kept in mind, however, that the revision petitioner / defendant is a Limited Company, which can be independently sued and can also sue. It has a juridical identity and presence. It is that company, which is now sought to be proceeded against by the respondent / plaintiff. The company is answerable to the claims in the two suits and the accounts of the company would reflect whether rents have been paid. If further there are any damages to be paid to the plaintiff as sought in O.S.No.4237 of 2015, then the assets of the company alone will be proceeded by the respondent / plaintiff in the suits. It is not the personal effects of the said Natraj Ramaiah which can be proceeded against by the respondent / plaintiff, if at all a decree is passed in either one of the two suits. He can reasonably plea to delink himself from the activities of the revision petitioner / defendant / company and claim that it is the company which is answerable to the claims of the respondent / plaintiff.

23.Therefore, it is clear that he can and does indeed stand apart from the company. He could be even on date a Director of the company, but still it is the revision petitioner / limited company / defendant which is answerable to the claims of the plaintiff.



24. Widening the scope of the suits by bringing him as a defendant

would not be of any advantage. He can always be summoned as a witness. If summons are issued from a competent Court, then a duty is cast on the individual to whom such summons are issued to answer such summons. The scope of the Code of Civil Procedure is wide enough to ensure that any individual to whom summons are served calling upon him to adduce evidence does indeed adduce evidence in the Court.

25. It must also be kept in mind, even though it is not a deciding factor, that though the lessor/ respondent/ plaintiff M/s. Dior Properties and Investments Private Limited, at the time when the lease entered into, was represented by the said individual Natraj Ramaiah in his capacity as Managing Director, now the suit had been verified by his own son, who now claims to be the Managing Director.

26. Therefore, the dual role which will have to be performed by Natraj Ramaiah will also have to be assessed. He cannot represent the lessor/plaintiff and be impleaded as defendant. It would only be appropriate that he stands apart and adduces evidence if summoned.



27.The learned Trial Judge had also examined the provisions under Sections 297 and 300 of the Companies Act, 1956 and stated that the said provisions speak only about the duty of a Director.

28.I am not prepared to interfere with the findings of the learned Trial Judge of the Court below and I would confirm the said orders.

29.At any point of time, an option is always open, either to the revision petitioner / defendant or the respondent / plaintiff, if they feel that any aspect has to be clarified by way of evidence from Nataraj Ramaiah, then summons can always be issued, calling upon him to appear before the Court to give evidence.

30.I would therefore confirm the order in I.A.No.197 of 2015 in O.S.No.4238 of 2015 and I.A.No.5 of 2016 in O.S.No.4237 of 2015 dated 05.11.2016 passed by the XVIII Additional Judge, City Civil Court Chennai.

31.Accordingly, the Civil Revision Petitions stands dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petitions are closed.



32.If the suit proceeds in its normal way namely, trial by examining of witness without any obstruction or stuttering or meandering around owing to filing of interlocutory applications, then an obligation is placed on the XVIII Additional Judge, City Civil Court Chennai to dispose of both the suits on or before 31.12.2022.

23.02.2022

Internet:Yes/No

Index:Yes/No

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To

The XVIII Additional City Civil Court, Chennai.



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C.V.KARTHIKEYAN,J.

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