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C.R.P.No.232 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.232 of 2023

and

C.M.P.Nos.1926 & 1928 of 2023

Mr.Pavan Krishnamurthy

... Petitioner

Vs.

1.M/s. Fast Track Logistics,
Represented by its Proprietor
Mr.M.Subramaniam,
New No.30, Old No.17, First Floor,
Second Cross Street, C.I.T. Nagar East,
Chennai – 600 035.
(Deceased)

2.M/s. Net Avenue Technologies Private Ltd.,
Registered Office at
No.5, Egmore High Road, Egmore,
Chennai – 600 008.
And also at
M/s. Net Avenue Technologies Private Ltd.,
Factory & Admin Office at
18 & 21, Race Course Road, Guindy,
Chennai – 600 032.

3.Mr.S.Rajesh Nahar

4.Mr.K.Ritesh Katariya

5.Mr.Samir Kumar



6.Mr.Khivraj Naresh Kumar

7.Mr.Hemchandra Gurunath Javeri

8.Mrs.Chitra

9.Mrs.S.Mahalakshmi

10.Mr.S.Praveen Raj Kumar

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 5th July 2022 passed in I.A.No.3 of 2019 in C.O.S.No.1167 of 2022 passed by the Commercial Court, Egmore, Chennai.

For Petitioner

: Mr.Rohan K George

ORDER

The civil revision petition is filed challenging the order and decreetal order passed in I.A.No.3 of 2019 in C.O.S.No.1167 of 2022 dated 05.07.2022.

2. The 5th defendant in the Suit is the revision petitioner herein. The 1st respondent instituted a Suit for recovery of money in C.O.S.No.1167 of 2022. During the pendency of the Suit, the revision petitioner / 5th defendant filed Interlocutory Application in I.A.No.3 of 2019 in C.O.S.No.1167 of 2022 under Order I Rule 10 (2) Code of Civil Procedure, 1908, to delete / remove



the revision petitioner / 5th defendant from the array of parties in the Commercial Suit.

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3. The learned counsel for the petitioner strenuously contended that the revision petitioner was holding the post of Director and subsequently, resigned from the post and further there are no specific allegations against the revision petitioner. Thus, he became an unnecessary party in the Commercial Suit and thus, the order passed by the Trial Court dismissing the Interlocutory Application is perverse and to be set aside.

4. The revision petitioner states that he is no way connected with the affairs of the plaintiff / Company and he has not interfered with the day to day administration of the Company and thus, impleading him as a party in the Suit, itself becomes unnecessary and he has chosen to file Interlocutory Application, which was not considered properly by the Trial Court and the petition was dismissed. It is contended that the Trial Court has failed to consider the fact that there is no averments in the plaint regarding the involvement of the revision petitioner into the affairs of the Company and thus, the order is infirm.



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5. Perusal of the finding of the Trial Court reveals that the plaintiff has not sought for any personal decree against the 5th defendant. It is not in dispute that the revision petitioner was holding the post of Director of the plaintiff / Company and the plaint averments also reveals that the 5th defendant has been impleaded as a proper necessary party. The unnecessary parties may be struck off only if they were impleaded improperly and in the present case, the revision petitioner was holding the post of Director of the plaintiff / Company admittedly and thereafter resigned. While so, the participation, involvement or otherwise of the revision petitioner are to be adjudicated and it is a triable issue. Thus, the Court cannot form an opinion in advance regarding participation as Director in the plaintiff / Company. This being the factum, the finding of the Trial Court in this regard is in consonance with the principles established and there is no infirmity as such.

6. That apart, the Suit was instituted by the Company for recovery of money and it was not instituted against the 5th defendant in his personal capacity and he was impleaded in his capacity as the erstwhile Director of the Company and thus, there is no impediment for the Trial Court to proceed



with the Suit and dispose of the same on merits and in accordance with law.

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7. Accordingly, order and decreetal order passed in I.A.No.3 of 2019 in C.O.S.No.1167 of 2022 dated 05.07.2022 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.232 of 2023 is dismissed. No costs. Connected Miscellaneous Petitions are closed.

06.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
Commercial Court,
Egmore,
Chennai.



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S.M.SUBRAMANIAM, J.

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