A.No.2320 of 2023
in CS.No.108 of 2011

RESERVED ON : 31.07.2023

PRONOUNCED ON : 10.11.2023

A.A.NAKKIRAN, J.

ORDER

1. This application has been filed by the 14th Defendant in CS.No.108 of 2011 to strike off the Plaint in the said suit.

2. The above suit has been filed, seeking a judgement and decree, for the following reliefs:-

(a) Declaration that the transfer of 12,000 shares of the 1st Plaintiff in the 12th Defendant, as mentioned in the E Schedule, to the Defendants 1 and 5 is null and void.

(b) Direction to the Defendants 1 and 5 jointly and severally to pay the 1st Plaintiff a sum of Rs.2 Crores, with interest @ 18% per annum towards refund of advance computed from this date till the date of realization.

(c) Declaration that the 12th and 13th Defendants are quasi partnerships and that their assets and businesses mentioned in Schedules A, B and D would be subject to dissolution and distribution equally between the first Plaintiff, first and fifth Defendants and the legal heirs of late K.Shankar Rao, viz., Defendants 9 to 11.

(d) Partition of the suit properties and put the 1st Plaintiff in exclusive possession of his 25% shares in the schedule mentioned properties.

(e) Costs of suit.

3. The Applicant has averred in the affidavit as follows:-

(a) The Applicant is the daughter of late K.Krishna Rao's sons, namely, Gopal Rao. The 1st Plaintiff is her paternal uncle and the 2nd Plaintiff is his wife and the Plaintiffs 3 and 4 are her cousins and others are family members. A business of Woodlands chain of Hotels was started by her late grandfather K.Krishna Rao. The 17th Respondent,Company was incorporated in the year 1972 as M/s.Nandi Hotels Pvt. Limited, which later was changed to the present name with effect from 27.09.1976. The The Respondents 16 and 17 were incorporated for the purposes of running Hotels. Initially, the 17th Respondent herein, which is a Hotel run at Bengaluru, was run by the Partnership Firm, consisting of late K.Krishna Rao and his sons. M/s.Nandi Hotels Pvt. Ltd. came to be incorporated to run the Hotels in Bengaluru. Accordingly, the said Company took over the management and affairs of the Bengaluru Hotel. In the said Company, Gopal Rao held 295 shares in his name. Gopal Rao died on 11.06.1985 and upon his demise, his 295 shares in the 17th Respondent herein devolved upon the Applicant and her mother. While so, the Respondents 1 to 4 have filed the above suit in CS.No.108 of 2011 seeking various reliefs, without including the Applicant and her mother as a party. Without such impleading, the reliefs sought for in the suit could not be dealt with.

(b) The Applicant's father's ownership of shares does not even find a mention in the plaint. The plaint did not contain anything relating to her shareholding in the 17th Respondent or about any transfer forms being executed by Applicant and her mother in the 17th Respondent Company. The above factors will be essential as Plaintiffs in the said suit have sought for dissolution and partition of the assets of the Respondents 16 and 17. 295 shares that devolved upon the Applicant and her mother were supposedly transferred to the name of the 17th Respondent and the 17th Respondent herein had alleged to have registered the said transfer in the Register of Members. The Applicant sent a letter dated 10.04.2011, to the 17th Respondent, requesting to rectify the error. The 1st Respondent issued a reply dated 11.06.2011, stating that the said shares have been transferred to the name of K.Pranesh Rao on 15.12.2004, pursuant to the verification of share transfer forms executed by Applicant and her mother. The shares represent only 2.41% of the total shareholding of the Company. The 1st Respondent has acted fraudulently in altering the shareholding pattern of the 17th Respondent Company by removing names of Applicant and her mother from the register and reflecting the 17th Respondent's name as the owner of such shares. The relief for dissolution of the 17th Respondent and distribution of 1/4th of the assets to the Respondents 1 to 4 is based on the false premise and is completely misleading, as the Respondents 1 to 4 have clandestinely included 295 shares. The Respondents 1 to 4 have also wantonly omitted to implead the Applicant and her mother as parties to the suit. The said act of the Respondents 1 to 4 in filing a suit without arraying Applicant and her mother as a party amounts to abuse of process of the Court.

(c) The Applicant approached the Company Law Board, Regional Bench, Madras in CP/1879/2011, seeking to rectify the register and by order dated, 28.06.2012, the Board was pleased to dispose of the petition, after recording that "the learned counsel for the first Respondent Company filed memo dated 26.06.2012 whereby it is stated that the Company has carried out the necessary rectification in its register of members. Accordingly, the register of members of the R1 Company now reflects 215 shares in the name of the first petitioner and 80 shares in the name of the second petitioner." The Company Law Board further held that "The relief sought by the petitioners has been complied with by the first Respondent Company. In view of compliance, the petition becomes infructuous." However, she did not receive any notice of annual general body meeting or any other statutory notices or documents as required under the Companies Act, 2013. The Plaintiff have also concealed the compromise decree passed by the Lok Adalat, Mangalore, arising out of a suit in OS.No 196 of 2010, on the file of the III Additional Civil Judge, Mangalore. The said suit was filed for partition of a portion, which was later sold, of the Mangalore property and in the said suit, the 1st Plaintiff in the above suit and Applicant were arrayed as the Defendants. Hence, the Plaintiffs cannot now come and state that not arraying the Applicant as a Defendant in the above suit was neither wilful nor wanton. The details of shareholders holding equity shares in the 17th Respondent Company as on 31.03.2019 will also disclose her shareholding of 80 shares in the Company. This Court, being satisfied that he is a necessary party to the said suit, was pleased to permit her to be impleaded as a Defendant.

(d) The Respondents 1 to 4 have clearly attempted to extinguish the valuable property rights that have devolved upon Applicant and her mother. The Respondents 1 to 4 are attempting to obtain a partition of the property situated in Mangalore by deliberately excluding her and certain other co-owners in the property in order to defraud us. A fraud has been played by the Plaintiffs. In such facts and circumstances, the Plaint in CS.No.108 of 2011 is liable to be stuck off.

4. The learned counsel for the Applicant has submitted that the documents would demonstrate that a fraud has been played, by hiding relevant facts and particulars on this Court by the Respondents 1 to 4 and that the Respondents 1 to 4 have clearly attempted to extinguish the valuable property rights that have devolved upon Applicant and her mother and that the Respondents 1 to 4 are attempting to obtain a partition of the property situated in Mangalore by deliberately excluding her and certain other co-owners in the property in order to defraud us and that even in this application, they have not chosen to fine any counter and hence, the Plaint is liable to be stuck off.

5. The learned counsel for the Respondents 1 to 4 has submitted as per the provisions of Order VI Rule 16 CPC, though a plaint could be struck off only in the rarest of cases, when there is clear abuse of process of law and court, however, the same has to be decided only based on the pleadings and the

admission made by the plaintiff and not based on the written statement or documents of the defendants and that a suit for partition can be determined only after a full fledged trial and that the Plaintiffs have already obtained leave to sue the properties situated outside the jurisdiction of this Court. The learned counsel would further submit that none of the defendants have filed their written statement so far even after passage of 12 years period and that it is the Applicant, who is abusing the process of court by filing such frivolous application in order to stall the entire proceedings of the suit and that when the Applicant is alleging fraud, it is her bounden duty to prove the same, by leading oral and documentary evidence and that having impleaded herself in the above suit, no prejudice would be caused to her if the suit is proceeded further and the Applicant can very well establish her alleged right in the suit and that on the other hand, a great prejudice would be caused to the other parties if this application is allowed and that since there are triable issues to be decided in the suit, it cannot be rejected in limine at the instance of the 14th Defendant alone and hence, this application is liable to be dismissed.

6. This court heard the learned counsel on either side and considered their submissions, including the relevant provisions and materials placed on record.

7. Leave was granted by this court regarding the properties in the other States. A perusal of the Mangalore Court decree reveals that there is no description of the schedule of the property. The applicant was impleaded as the 14th defendant. If she wants to raise her objections, the applicant can submit all

her submissions in her statement and she has every right to cross examine the witnesses regarding her contentions. When other defendants are there, for one of the defendants objection, this Court cannot struck off the entire plaint in toto. The suit was filed in the year 2011. The Company Law Board has passed the order in 28.06.2012 and hence, the suit was filed much earlier. Hence, there is no suppression of fact and therefore, there is no abuse of process of law. Only after full fledged Trial and after analysing the entire oral and documentary evidence let in by both sides and hearing both side arguments, this Court can come to proper conclusion. Hence, at this stage, this Court is not inclined to entertain the application.

8. In fine, this application is dismissed. No costs.

10.11.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
A.No.2320 of 2023
in CS.No.108 of 2011

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