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A.No.4430 of 2022

in C.S.No.43 of 2022

<i>Reserved on</i>	<i>03.04.2023</i>
<i>Delivered on</i>	<i>05.06.2023</i>

K.KUMARESH BABU, J.

The instant application has been filed to implead the second respondent herein as the second defendant in the suit.

2.Heard Ms.Chitra Sampath, learned Senior Counsel for Mr.T.S.Baskaran, learned counsel for the applicant and Mr.Arun Karthik Mohan, learned counsel for the first respondent and Mr.P.Muthusamy, learned counsel for the second respondent for M/s.Anand, Samy and Dhruva.

3.Ms.Chitra Sampath, learned Senior Counsel appearing on behalf of the applicant would submit that the applicant/plaintiff had a benefit of a Judgment passed by the Industrial Tribunal of Paris and also an Award passed by the



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Journalists Arbitration Commission of Paris. The suit had been filed seeking to confirm the Judgment and the Award stated supra and to consequently direct the defendant to make the payment to the applicant/plaintiff as per the Judgment and Award. The first respondent herein had filed a written statement in the aforesaid suit indicating that the first respondent had demerged its publishing business undertaking in favour of the second respondent herein pursuant to the Award of the National Company Law Tribunal dated 28.08.2017 and that they would not be liable to pay the amount awarded either under the Judgment or under the Award. Therefore, the present application has been made seeking to implead the second respondent herein as the second defendant in order to enforce the Foreign Judgment against the successors in interest of the first respondent/defendant. Learned Senior Counsel would submit that if the application is not ordered, the applicant would be finding it difficult to implement the Award passed in her favour.



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4.Mr.Arun Karthik Mohan, learned counsel appearing on behalf of the first respondent would submit that in the present suit as against the first respondent, there is no lis as it had already transferred to a successor in interest prior in time to the exparte Foreign Order and that such transfer included the liabilities of the first respondent. He would further justify that the order dated 28.08.2017 sanctioning demerger of the first respondent publishing business undertaking in favour of the second respondent is a matter of public knowledge and therefore impleading the first respondent is wholly misconceived and the non joinder of the second respondent would render the suit to be dismissed in limine. He would also submit that the orders passed by the Industrial Tribunal of Paris as well as the Journalists Arbitration Commission were made against a person who was no more in law carrying on that business and therefore, they are non-est in law. He would further plead that the respondent name is liable to struck off in the cause title of the present suit and the plaintiff is liable to reimburse the first respondent for all indirect and direct expenses incurred in the present suit.



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5.Mr.P.Muthusamy, learned counsel for the second respondent would submit that the second respondent had taken over a publishing business undertaking as early as on 28.08.2017 and the applicant cannot claim ignorance of such demerger and the Judgment in favour of the applicant as against the first respondent cannot be impleaded as against the second respondent as the second respondent had not received any notice of the aforesaid legal proceedings. Neither the plaintiff nor the first respondent had brought to the notice of the second respondent as to the pendency of such proceedings and the purported liability under the said proceedings. He would further submit that the Judgments that have been made in favour of the applicant are judgments in personam and it will be not binding upon the second respondent and hence, he would seek dismissal of the above application.

6.I have considered the rival submission made by the respective counsels appearing for the respective parties and perused the materials available on record.



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7. It is an admitted fact by both the respondents that the publishing division of the first respondent was demerged in the year 2017 and the liabilities of the first respondent had vested with the second respondent. It is also an admitted fact that the liabilities of the first respondent after the demerger would be taken over by the second respondent. The claim of the applicant/plaintiff in the suit is of a claim before the demerger. A reading of the Award of the Industrial Tribunal would show that the notice has been served upon the first respondent but had not chosen to represent itself before the said proceedings, this may be due to the process of demerger. But, however, the first respondent cannot jerk away its liability. Having admitted that the liabilities also stood transferred to the second respondent, the second respondent cannot technically plead that he would not be liable to take over the payment ordered in the judgment and the Award stated supra. In view that there is already judgment and Award in favour of the plaintiff and that demerger had happened in respect of the publishing division from the first respondent to the second respondent which had been approved by the National Company Law



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Tribunal as early as in the year 2017 wherein the liabilities of the first respondent has stood transferred to the second respondent, I am prima facie of the view that the second respondent is a just necessary party to this suit. Hence, the second respondent is impleaded as the second defendant in the suit.

8.Learned counsel for the plaintiff is directed to carry out necessary amendment in the suit and the second respondent is directed to file its written statement within a time prescribed and such time shall be calculated from the date of this order.

9.In fine, the application is allowed.

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