



C.R.P.(MD).No.253 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.02.2023

DELIVERED ON: 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.253 of 2023

S.Mohammed Mirza Ismail

...Petitioner

Vs

1.Delhi Hall, a Partnership Firm
Represented by its Managing Partner
M.Shahul Hameed

2.M.Shahul Hameed

3.S.Mohamed Shamsul Hudha

4.G.Ganesan

5.Vishnuram

6.Suruliappan

7.Murugan

8.P.Nandabalan

9.Vasanthi Krishnamoorthy

10.A.K.Janarthanan

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11.Narmadha

12.Sharmila

13.C.Sait

14.Pappu

15.Pootharajpandian

16.Kandapillai

17.Lakshmi

18.Ganesan

19.K.Rajasekaran

20.Suruliyandi

21.V.S.Ashokan

22.Mahendran

23.Dr.Krishnasamy

24.Yasin Moulana

25.Ramesh Babu

26.Subburayar

27.K.K.Ilangovan

28.Rajkumar

29.Krishnamoorthy

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30.Chellam

31.Subramani

32.Saravanan

33. Dharmaraj

34.G.Tamilvanan

35.Kumaresan

36.Anitha

37.Veera Meenakshi

38.S.Rajamani

39.Ashik

40.H.Rajamani

41.Pugalgiri

42.Kannappan

43.Selvam

44.H.Abbas Manthiri

45.Rajamohan

46.B.Magibalan

47.R.Sathyasivam



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48.Athithan

49.S.T.T.Rajkumar

50.K.Saravanan

51.Dr.Dhamodharan

52.K.M.Subkuthulla

53.Surulivel

54.S.Muruganantham

55.Uma Rani

56.Nandini

57.Dinakaran Tamil

58.Sumathi

59.K.Nasar

60.Narayanaswamy

61.Paramaraju

62.Haji M.Habibullah

63.Savithri

64.Joseph

65.Kamila

66.Amutha



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67.Renuga

68.Sudha

69.Latha

70.Kavitha

71.S.A.Samsudeen

72.Radheshyam Sandak

73.Parthiban

74.R.Mohanram

75.Rajesh

76.Palanichamy

77.Kalyani

78.Balamurugan

79.N.Jahur

80.S.A.Thameem Ansari

81.A.Mohammed Saleem

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to number the unnumbered Filing No.OS/1765/2022 CNR No.TNTH050022822022 on the file of the Sub Judge, Uthamapalayam and direct him to take the suit on file.



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For Petitioner : Mr.D.Malaichamy

ORDER

The present revision petition has been filed by the plaintiff in an unnumbered suit for dissolution of partnership firm and rendition of true accounts.

2.The plaintiff who is one of the partners of the first defendant firm has filed the said suit as against the firm and two of its partners arraying them as defendants 1 to 3 in the suit. In the said suit, third parties to the partnership firm namely defendants 4 to 81 have been arrayed as defendants. The trial Judge had returned the plaint on the ground that defendants 4 to 81 are unnecessary parties and has returned the plaint for deleting the said defendants. Challenging the said order, the present civil revision petition has been filed.

3.The learned counsel for the petitioner/plaintiff had contended that defendants 4 to 78 are the creditors of the firm who have lending money to the partnership firm namely the first defendant. He had further contended that defendants 79 to 81 are the debtors who are purchased textile on credit basis and obtained loan from the firm. However, they are



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not in possession of any material or document to establish the borrowal of money by the firm or lending of money by the firm in favour of the defendants 79 to 81.

4.The learned counsel for the petitioner had further contended that the necessary averments in this regard have been made in the plaint. He had further contended that unless these defendants are arrayed as parties in the suit, he will not be in a position to establish that lending or borrowal of the first defendant firm which is very much essential for accounting of the firm. He had further stated in view of Order 7 Rule 14(2), the plaintiff had specifically stated in whose possession the documents are available. In view of the above said provision, the plaintiff need not produce his documents which are not in possession or his power. Therefore, the return order of the trial Court that the plaintiff has not produced any document to establish the borrowal or lending by partnership firm is not legally sustainable. Unless the creditors and debtors of the firm are made as parties, it is difficult to compel them to produce the documents which are under their custody. The learned counsel for the petitioner had further contended that the presence of the creditors and debtors is very much essential in settling the accounts of the first defendant firm. The



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prayer in the plaint has been sought as against all the defendants and hence, the trial Court was not correct in arriving at a conclusion that the prayer is restricted only to the defendants 1 to 3 alone. Unless the creditors and the debtors of the firm are made as parties, no effective decree could be passed. Even assuming without admitting that they are not necessary parties, at least they should be considered to be proper parties for effective and complete adjudication of all the matters in dispute. He had further pointed out that there is no bar in the Partnership Act to sue third parties like creditors and debtors. Hence, he prayed for setting aside the order passed by the trial Court and for a direction to number the plaint.

5.I have considered the submissions made on the side of the revision petitioner.

6.A perusal of the plaint indicates that the plaintiff is a partner in the first defendant firm. Defendants 2 and 3 are managing the said firm. The plaintiff has sought for a judgement and decree as against the defendants for dissolving of first defendant partnership firm and for rendition of true accounts. As far as the first part of the prayer namely dissolution of the first defendant firm is concerned, the creditors and



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debtors of the firm are not necessary parties and only the firm and the partners of the said firm are necessary parties. As far as the second limb of the prayer namely rendition of true accounts from 01.04.2020 onwards is concerned, only the partners who are managing the firm from 01.04.2020 will be liable to render true accounts to the plaintiff.

7.It is not the case of the plaintiff that the defendants 4 to 81 were also managing the firm so as to make them liable for rendition of accounts. It is an admitted case of the plaintiff that he is not having any document to establish that defendants 4 to 81 are creditors and debtors of the firm. In Paragraph No.17 of the plaint he has specifically pointed out that he is not in possession of any document relating to the transaction of the creditors and the debtors. In the said paragraph, the plaintiff has undertaken to take necessary steps to produce the said document during the trial. Therefore, it is clear that on the date of filing of the plaint, the plaintiff is not having any proof whatsoever to implead the defendants 4 to 81 on the alleged ground that they are creditors and debtors.

8.When a decree is passed for rendition of accounts, an Advocate Commissioner accompanied by the Chartered Accountant would



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be appointed to check the accounts. Only the lending or borrowal of the firm, if any, that are reflected in the partnership account have to be settled by the firm. Therefore, the apprehension of the plaintiff that without their presence, the issue relating to rendition of accounts could not be resolved, is not legally sustainable.

9.The learned counsel for the petitioner had contended that the plaintiff being the dominus-litis, the Court cannot suo moto direct him to delete the defendants 4 to 81. The Hon'ble Supreme Court in a judgement reported *in (2010) 7 SCC 417 (Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others)* in Paragraph No.22 has held as follows:

“22.Let us consider the scope and ambit of Order I Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject



10. Therefore, it is clear that the Court has got judicial discretion by strike out or add parties at any stage of proceedings either by exercising suo moto power or on the application by the parties to the proceedings. Therefore, the contention of the learned counsel for the petitioner that the plaintiff being dominus-litis, he would add any number of defendants to the suit, even though they are not necessary parties is not legally sustainable. Therefore, this Court cannot be a mute spectator when a plaintiff adds numerous defendants who were noway connected with the main prayer in the suit.

11. In view of the above said facts, this Court does not find any illegality or infirmity in the return order passed by the trial Court. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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To

The Subordinate Judge,
Uthamapalayam



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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