

**2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-COM-3-2023 (O&M)
Date of decision: 09.05.2023

M/s Universal MEP Projects & Engineering Services Ltd.Appellant

Versus

M/s INA Energy Private Limited and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Hemant Bassi, Advocate
for the appellant.

HARPREET SINGH BRAR, J.

CM-7-FACOM-2023

Prayer in this application is for condonation of delay of 37 days in filing the appeal.

For the reasons mentioned in the application which is supported by the affidavit of Mr. Arun Tandon authorized person of the appellant, the application is allowed and delay of 37 days in filing the appeal is condoned.

FAO-COM-3-2023 (O&M)

1. The appellant has filed the present appeal against the order dated 29.09.2022 passed by the learned Additional District Judge (Commercial Court), Gurugram, whereby, an application filed by the appellant under Order 1 Rule 10 read with Section 151 of Code of Civil Procedure, 1908 (in short 'CPC') seeking its deletion from the array of parties and rejection of the plaint *qua* the appellant, was dismissed.

FACTUAL BACKGROUND

2. The facts emanating from the record are that the respondent No.1/plaintiff filed the suit bearing CS No.4/2022 titled as 'M/s INA Energy Private Limited Vs. M/s Samaarambh Solar Power Pvt. Ltd. and another' seeking recovery of an amount of Rs.1,23,85,527/- from the respondent No.2/defendant No.1 as per the Joint Venture and Service Agreement dated 08.06.2018 executed between the respondents No.1 and 2.

The appellant was impleaded as defendant No.2 in the suit and subsequently on the receipt of the notice, the appellant had appeared and filed an application under Order 1 Rule 10 read with Order 7 Rule 11 of CPC seeking deletion of its name from the array of parties and rejection of the suit *qua* the appellant. The learned Additional District Judge (Commercial Court), Gurugram, dismissed the application filed by the appellant vide order dated 29.09.2022.

CONTENTIONS

3. Learned counsel for the appellant has assailed the order dated 29.09.2022 on the ground that the learned Additional District Judge (Commercial Court), Gurugram, has failed to appreciate that neither there is any agreement between the appellant and respondent No.1 nor is there any privity of contract. Admittedly, the appellant has been arrayed only as a *proforma* party and no relief has been claimed against the appellant as such, the plaint is liable to be rejected. He further asserts that from the pleadings of the suit filed by respondent No.1, no cause of action arises against the appellant and the suit filed by respondent No.1 against the appellant is not maintainable. Learned counsel for the appellant further asserted that in the order dated 29.09.2022, the learned Additional District Judge (Commercial Court), Gurugram, has failed to appreciate that the appellant is neither a necessary nor a proper party to the suit.

Admittedly, the alleged agreement is between the respondents No.1 and 2.

ISSUE

4. After hearing the learned counsel for the appellant at length and carefully examining the record of the case, we find that the following issue is involved in the present appeal which requires to be adjudicated -

Whether a party can be impleaded against whom no relief has been claimed, specially, when the agreement on the basis of which the suit is filed is between respondents No.1 and 2 and the appellant is not privy to the contract?

ANALYSIS

5. The perusal of the order dated 29.09.2022 shows that the above contentions of learned counsel for the appellant had already been dealt with by the learned Additional District Judge (Commercial Court), Gurugram on the touchstone of Order 1 Rule 10 of CPC.

6. Undisputedly, defendant No.1 was solely responsible to respondent No.2-Tata International Limited which got merged with the appellant in the year 2019 for execution and completion of the contract. All the funds which are to be received from Tata International Limited (which got merged with the appellant) related to the project were to be distributed between the respondents No.2 and 1 in the ratio of 30:70. The appellant was well aware of the Joint Venture agreement between the respondents No.1 and 2 in which all payments due under the project ought to be paid by the Tata International Limited into the Escrow Account only. It is also discernible from the order dated 29.09.2022 that after completion of each stage of the project, the respondent No.2 raised its invoices with the appellant and as per the agreed terms, the respondent No.1 raised back to back invoices with respondent No.2. The learned Additional

District Judge (Commercial Court), Gurugram, had noticed the pleadings of the plaintiff and recorded in the order dated 29.09.2022 that initially, all payments against invoices were received by respondent No.2 in the Escrow account but later on respondent No.1 came to know about a gross breach of the terms of the Joint Venture agreement and fraudulent intentions of respondent No.2, who got the bank account details changed with the appellant. Instead of receiving the payments against invoices into the Escrow account, respondent No.1 started receiving the same into its other bank accounts.

7. One more factor which is noticeable for the adjudication of the appeal is that the respondent No.1 vide e-mail dated 24.08.2020, requested the appellant to release the outstanding amount directly to the bank account of respondent No.1 and the appellant has not done the needful. Further, even after holding a meeting on 07.01.2021; the appellant has not provided any timeline to respondent No.1 for transfer of the outstanding amount to the bank account of respondent No.1. Thereafter, a legal notice dated 30.01.2021 was also served upon the appellant calling upon it to pay the outstanding amount but in spite of the receipt of legal notice, the appellant has failed to pay the outstanding amount.

8. After considering the various pleas in the pleadings of the suit against appellant, the learned Additional District Judge (Commercial Court), Gurugram, came to the conclusion that the appellant is concerned and connected with the issue involved in the suit and there are specific averments made in the plaint *qua* the role of the appellant even though the appellant has been impleaded as a *proforma* defendant and no relief has been claimed against it. The learned District Judge has noticed in the order dated 29.09.2022 that the appellant has already filed the written statement and the stand it has taken is

vital and material in helping the Court to decide the *lis* in just and proper manner and the appellant if not a necessary party, at least is a proper party whose presence would enable the Court to completely, effectively and adequately adjudicate upon all the matters in the suit.

9. Order 1 of the Civil Procedure Code, 1908 deals with the fundamental ingredient of civil suit i.e. party to the suits. This provision answers the question with regard to addition, deletion, substitution, transposition and it also covers the non-joinder and mis-joinder of the parties. It also provides for the provisions regarding impleadment of the necessary and proper parties. The very object behind the doctrine of necessary and proper party is to promote the cause of justice and such discretion is to be exercised with reference to the pleadings in the plaint and the issue involved for adjudication before the Court.

10. The law on the subject is well settled. The court has a wide and extensive power to add any party at any stage of the proceedings either upon application of an existing party to the suit or *suo moto* by the Court before which the suit is pending under Order 1 Rule 10 (2), CPC. The above provision enables the Court to effectively and completely adjudicate and settle all questions involved in the suit. The joinder of the parties or deletion of the parties is a matter of judicial discretion which has to be exercised in view of the pleadings and facts of the case.

11. The broad distinction between the necessary party and proper party can be summarized as under:-

- 1) A necessary party is the one whose presence is indispensable for determination of all the issues involved in the suit and to settle the dispute conclusively and without their presence, the effective determination of the dispute is not possible.

2) A proper party is one whose presence before the Court is not necessary but it may be proper for an effective and complete adjudication of all the dispute between the parties.

12. Like the necessary party, the presence of proper party is also essential for complete and final adjudication of the issue involved in the *lis* and presence of the proper party enables the Court to adjudicate more effectively and completely.

13. A three Judge Bench of the Hon'ble Supreme Court in ***Kasturi Versus Iyyamperumal and others, (2005) 6 SCC 733***, speaking through Justice Tarun Chatterjee, has reiterated the law with regard to the impleadment of the parties to the suit and observed as under:-

“7....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are-(i) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (ii) no effective decree can be passed in the absence of such party.

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13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

A two Judge Bench of the Hon'ble Supreme Court in ***Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others, (2012) 8 SCC 384***, speaking through Justice G.S. Singhvi, has laid down broad guidelines after considering various pronouncements on the law governing impleadment of parties and held as under:-

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any

person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.”

A two Judge Bench of the Hon’ble Supreme Court in ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others***, (2010) 7 SCC 417, speaking through Justice R. V. Raveendran, has held as under:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.”

CONCLUSION

14. In view of the above discussion and settled law, we find that the appellant may not be necessary party whose presence is indispensable for constitution of the suit and passing of the effective order by the Court but in our view, the appellant is a proper party whose presence is material for complete and effective decision arising from the subject matter of the suit based upon the pleadings of the plaint. We do not find any ground to interfere with the order

dated 29.09.2022 passed by the learned Additional District Judge (Commercial Court) Gurugram. Accordingly the appeal is dismissed with no order as to costs.

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15. In view of the disposal of the main case, no order is required to be passed in the present application and the same stands disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

09.05.2023

<i>Neha</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No