

06.05.2024
Item No.5
gd/ssd

CO/3348/2023
M/S. ASSOCIATED TRADERS AND ORS.
VS
P. KRISHNA PRASAD AND ANR.

Mr. Debdatta Saha,
Mr. Subhamay Diwanji
..for the Petitioners.

Mr. Nitai Ch. Saha
..for the Opposite party No.1.

Mr. Rahul Karmakar,
Mr. Sounak Mukherjee,
Mr. Abhijit Chandra Majumdar
..for the Opposite party No.2.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an Order being No.20 dated 24th July, 2023 passed by the learned Judge, 11th Bench, City Civil Court at Calcutta in Title Suit No.20 of 2020.

By the order impugned the application of the opposite party no.2 herein for being added as a party defendant in the said suit stood allowed.

The learned Advocate appearing for the petitioners submits that the allegations in the plaint are not directed against the opposite party no.2 herein and the opposite party no.2 is neither a necessary party nor a proper party to the suit.

Mr. Karmakar, learned Advocate representing the opposite party no.2 herein draws the attention of the court to paragraph 1 of the plaint wherein it has been stated that the opposite party no.2 had closed down handing over all the responsibilities to the plaintiff no.1 herein and submits that such allegation is incorrect.

Mr. Karmakar further submits that the opposite party no.2 herein is in possession of the suit property as a tenant and have all documents in support of its right to possess the same. He further submits that unless the opposite party no.2 herein is impleaded as the party defendant in the suit, the right of the said opposite party no.2 to possess the property shall be affected.

This, according to Mr. Karmakar, prompted the opposite party no.2 to be impleaded as a defendant in the suit.

Heard the learned Advocates for the parties and perused the materials on record.

Title Suit No.20 of 2020 was filed for evicting the opposite party no.1 herein from the suit property upon revocation of the licence alleged to have been granted by the plaintiffs in favour of the said defendant. The opposite party no.2 is claiming tenancy right in respect of the premises and claims to be in possession of the suit premises through the

opposite party no.1 herein. Whether the opposite party no.2 herein has any manner of right in respect of the property in question cannot be the subject matter of the instant suit filed by the petitioner to evict the opposite party no.1. It is well settled that by way of addition, the scope of the suit cannot be enlarged. In the event the opposite party no.2 is allowed to be added as a party defendant, the scope of the suit will be enlarged so as to include within its scope the dispute sought to be raised by the opposite party no.2 against the petitioner regarding closure of the opposite party no.2/Company and handing over responsibilities to the plaintiff no.1 including the claim for tenancy right. The plaintiff/petitioner herein being *dominus litis* cannot be compelled to fight a person against whom he does not claim any relief. In the event the opposite party no.2 has any grievance against the plaintiff no.1 herein, it will be well open to the opposite party no.2 to canvass its rights in the manner known to law.

The order of the learned trial judge is a non-speaking one

For the reasons as aforesaid, the impugned order is set aside.

CO 3348 of 2023 stands allowed.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)