

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO. GA/1/2024
APOT/1/2024
WITH
CS/61/2021

GYAN TRADERS LTD.
Vs
PRANAVA CITY COMPLEX PVT. LTD.

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 19th February, 2024

Mr. Krishnaraj Thaker with
Mr. Anurag Bagaria, Advs.
...for the appellant.

Mr. Suman Kr. Dutt with
Mr. Paritosh Sinha,
Ms. Shrayashee Das
Mr. Rohit Banerjee,
Mr. Himanshu Bhawsingka &
Mr. R.K. Thakur, Advs.
...for the respondent.

The case of the appellant is this.

The respondent has sued them on a loan.

The appellant admits that they had received money from the respondent. Mr. Thaker, learned advocate appearing for them, contends that although the sum was received by his client, they were part of a chain involved in a circular movement of the fund. The fund was not retained by them. It was received by others, who are necessary parties.

The appellant has not filed a written statement as yet, although an application is pending for extension of time to do so.

Mr. Suman Kumar Dutt, learned advocate for the respondent submits that this application for addition of party has been filed by the appellant apprehending judgement to be passed against them in a pending judgement upon admission application by his client. The learned judge has rightly dismissed the application for addition of party.

We have considered the submissions of learned counsel for the parties.

In a cause of action of this kind, it is the plaintiff's choice to fix liability on a party in respect of a claim. If by the averments in the plaint

that party is the only party to be liable, then that party is the only proper or necessary party. However, if at any stage of the suit the court finds that the party impleaded may not be liable or fully liable or that other parties are also likely to be liable but not impleaded, then it may consider whether to implead a party as a proper or necessary party or one whose presence is required for disposal of the suit or to dismiss the suit for non-joinder of a necessary party.

Here in the plaint only the appellant has been alleged to be liable on the loan. If the respondent is able to prove that, that is the end of the matter. If they are unable to, the suit is liable to be dismissed.

If the suit runs upto trial, then it would be open for the appellant to prove the involvement of the parties whom they want to be impleaded as parties in the suit in the circular movement of the fund. We also make it clear that at any stage of the suit upto closure of the trial if the court forms an opinion that a party should be formally impleaded, it would be open for it to do so, suo motu or on an application by a party.

With the above observation this appeal (APOT/1/2024) and the connected application (GA/1/2024) are disposed of.

While parting, we observe that any views expressed by the learned single judge with regard to the merits of the claim are to be taken as tentative views or mere observations.

The impugned judgement and order is affirmed to the above extent and subject to the above observation.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)