



Application No.5238 of 2024  
in O.P.No.541 of 2010

**Dr.G.JAYACHANDRAN, J.**

This application is filed by the applicant to invoke third party proceedings against the 4<sup>th</sup> respondent herein.

2. According to the applicant, the loan which is subject matter of the Original Petition was availed by the 1<sup>st</sup> respondent/Tamil Nadu Industrial Investment Corporation Ltd, a registered company in which applicant, T.N.Soundararajan was the Director at that point of time. Thereafter, 1<sup>st</sup> respondent/Company shares were acquired by M/s.D.B.Zwirn Mauritius. At the time of purchase of the share, the said M/s.D.B.Zwirn Mauritius has executed a deed of Indemnity dated 08.11.2006 relieving respondents 2 and 3 from their personal guarantees. Therefore, the present application is filed to proceed against the M/s.D.B.Zwirn Mauritius, which has indemnified the respondents 1 & 2 from all liabilities.

3. The counter filed by the 1<sup>st</sup> respondent is that the application to proceed against third party under Order VIII-A, Rule 1 of C.P.C is not maintainable.



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4. The petition is filed for the recovery of money by a State Finance Corporation, governed by the State Finance Corporation Act. This application was filed after recording of evidence from both sides, only to protect the proceedings at the stage when the case was listed for argument. The alleged indemnity deed dated 08.11.2006 was brought to the notice and light of the day only after the examination of witness and was not mentioned in the reply notice or in the counter statement or when the witness on the side of the respondent mounted the witness box. The alleged indemnity agreement dated 08.11.2006 is not a valid document. Therefore, the application is not maintainable and is liable to be dismissed.

5. This Court, on perusing the alleged indemnity bond as well as the stage at which it has been introduced for the first time, holds that this application is liable to be dismissed. If at all, the applicant/respondent in anyway indemnified by the third party, M/s.D.B.Zwirn Mauritius and if that indemnity bond is valid, it is always open to the applicant/respondent to invoke the provisions of the indemnity bond and get indemnified from any liability arising out of this Original Petition.



6. Accordingly, this Application is dismissed with costs of Rs.10,000/-, payable to the respondents within a period of seven days. Failing which respondents will be non-suited.

7. Post the matter on 06.01.2025 for arguments.

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03.12.2024



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