



CRP No.4712 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.4712 of 2023 and
CMP No.27982 of 2023

A.Habibur Rahman

... Petitioner

Vs.

1. A.Mohammed Mustafa
2. A.Abdul Wahid
3. Faridha Banu

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.3/2023 in O.S.No.5299, dated 24.08.2023 on the file of the VI Additional City Civil Court, Chennai.

For Petitioner

: Mr.C.S.Vedavalli

ORDER



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This Civil Revision Petition has been filed to set aside the order passed by the learned VI Additional Judge, City Civil Court, Chennai in I.A.No.3/2023 in O.S.No.5299/2022, dated 24.08.2023.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the plaintiff and the respondents herein are the defendants in O.S.No.5299/2022 and the plaintiff has filed the above said suit for recovery of a sum of Rs.24,70,000/- along with interest. Pending suit, the first respondent herein/first defendant has filed an application in I.A.No.3/2023 under Order 1 Rule 10(2) of CPC to strike out and delete his name from the suit on the ground that there was no transaction between him and the plaintiff and the amount was paid only to the defendants 2 and 3 by the plaintiff and hence, he is not a necessary party to the suit proceedings. The above said application was allowed and challenging the above order, the present civil revision petition has been filed.



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3. The learned counsel for the petitioner/plaintiff submitted that, though the second and third respondent have borrowed the money from the plaintiff, the first defendant has participated in the money transaction and he knows the entire transaction and since the defendants have failed to repay the borrowed amount, they have been arrayed as parties /defendants 1 to 3 in the suit. Therefore, the first defendant also is a necessary party, but the Trial Court, without considering the above aspect, has erred in dismissing the application. As such, the impugned order is liable to be set aside.

4. Heard the learned counsel for the petitioner and I have perused the materials on record.

5. On perusal of records it reveals that the petitioner herein is the plaintiff and the respondents herein are the defendants in the above suit, which has been filed for recovery of money. According to the petitioner/plaintiff, the first defendant is the main witness at the time of borrowal of the hand loan by the defendants 2 and 3 from the plaintiff and he is well



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aware of the entire loan transaction and hence he is a necessary party to the suit. According to the first respondent/first defendant, he is the elder brother of the plaintiff and the second defendant; and the third defendant is the wife of the second defendant; and on the assurance made by the defendants 2 and 3, the plaintiff has given money to them and he had not obtained any hand loan from the plaintiff and hence, he is not a necessary party to the suit proceedings and his presence before the court is not necessary for the effective and complete adjudication on the question involved in the suit.

6. After hearing both side, the learned Judge, in her order, has observed as follows.

10. Though it is well settled that the plaintiff being a dominus litus is entitled to choose the person against whom he is seeking the relief, but the interest in the suit property is the sine qua non for seeking impleadment in the suit, where the property is the subject matter. Since this is a suit for recovery of money against specific persons, it is necessary that the persons alleged to have borrowed money alone are added as parties to the list, in order to enable the court effectually and completely to adjudicate upon and settle the questions involved in the suit.

11. The object of the rule is to bring on record all the persons



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who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence, at the same time, without any protraction, inconvenience and to avoid multiplicity of proceeding. Therefore, in the present case, since the plaintiff has not sought for any relief as against the petitioner/first defendant and his adding as a party to the lis is not at all required. A bare perusal of the plaint and the counter filed in this application also clearly shows that since he was aware of the transaction between the plaintiff and the defendants 2 and 3, and since he was a witness to the said borrowal, he has been arrayed as first defendant in the suit, though there is no specific allegation of borrowing by the petitioner/first defendant. As per the version of the plaintiff himself, he has admitted that the petitioner/first defendant is only a witness to the transaction. Therefore, it is very clear that he is a third party to the said transaction between the plaintiff and the defendants 2 and 3. A third party cannot be added in a suit for recovery of money just to find out as to who borrowed the money from whom. He can only be called in evidence to depose about the same. Therefore, the averments adduced by the petitioner/first defendant in this application seems reasonable and is to be accepted, since there is no right to some relief against the petitioner/first defendant in respect of the controversies involved in the proceedings and further his presence is not at all required for passing of an effective decree.

7. It is also noticed that, there is no averment made in the plaint that the plaintiff has given a hand loan to the first defendant and for the same, he had given assurance for repayment of the alleged hand loan. The only



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averment made in the plaint is that the second and third respondents have borrowed the money for purchasing the property. In such circumstances, this Court is of the view that there is no ground raised by the petitioner/ plaintiff to say that the first defendant is a necessary party to adjudicate the dispute and hence, the learned Trial Judge has rightly allowed the application and I find no infirmity to interfere the same. As such, the civil revision petition is liable to be dismissed.

8. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Internet: Yes/No
mst

To

VI Additional Judge,
City Civil Court, Chennai.

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V.SIVAGNANAM, J.,

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