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Orders Reserved on : 23.01..2024

Orders Pronounced on : ..02..2024

A.No.1125 of 2022

in

C.S.No.79 of 2018

N.SATHISH KUMAR.J.,

This application has been filed by the defendants 1 and 2 in the suit in C.S.No.79 of 2018 seeking

(i) leave to the applicants for their entitlement against “third party” to serve third party notice to that effect sealed with seal of the Court on the respondents 2 to 8 as well as proposed parties/respondents 9 to 16;

(ii) grant of mandatory injunction against the “third party” directing respondents 10 to 16/proposed third party defendants to return the title deeds of (a) suit property, (b) house property measuring 2070 square feet in Philomena Nagar, Thanjavur, more fully, set out item 2 of the schedule to the application, (c) 18 ½ cents of land in Thirumangalam, Madurai, property, more fully, set out in the schedule as Item 3 to the application;

(iii) declaration declaring the sale deed dated 14.11.2011 executed by “third party” 16th respondent to and in favour of 14th respondent in respect of Thanjavur landed property, more fully described as item 1B in the



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schedule to the application as sham and nominal, non est / null and void and not binding on the applicants and consequently, grant permanent injunction restraining the respondents 14 & 16, their men, servants, agents and anyone claiming under them or trust of them from any manner encumbering / alienating the abovesaid property, more fully described as item 1B in the schedule to the application;

(iv) grant of mandatory injunction directing the respondents 3 to 9/defendants 3 to 9 and third party viz., respondents 10 to 16 to return the inchoate promissory notes and cheques and agreement of sale dated 05.07.2006 in respect of 35262 square feet of property situated in Thanjavur, more fully set out as item 1A in the schedule to the application executed by the 1st applicant and retained by the respondents 10 to 16, more fully set out as item 1A in the schedule to the application;

(v) grant of ad-interim injunction restraining the respondents, their men, servants, agents or anyone under them or trust of them from encumbering or alienating or any manner dealing with properties more fully set out as items 1 to 3 in the schedule to the application pending disposal of the third party procedure; and

(vi) a direction directing the respondents to pay



the cost of the application and suit to the applicants / defendants 1 and 2.

2. The suit has been filed by the 1st respondent/plaintiff against the applicants/defendants 1 and 2 and 14 others praying for a judgement and decree:-

(a) directing the defendants 1 and 2 to pay to the plaintiff a sum of Rs.1,24,62,000/- together with interest as may accrue between the date of filing of the plaint and date of payment on some date to be named by the court;

(b) in the event of default in payment of the amount decreed within the time stipulated by this court; accord permission to the plaintiff to sell the mortgaged property, more fully described in the schedule to the suit and adjust the proceeds (after defraying the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and costs;

(c) that if the sale proceeds shall not be sufficient for satisfaction of the decree in full, the defendants 1 and 2 may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of 18% p.a. until realization; and

(d) directing the defendants to pay to the plaintiff



the cost of the suit.

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3. For the sake of convenience and to avoid unnecessary confusion or ambiguity in the discussion, the applicants and the respondents 2 to 8 in this application will hereinafter be referred to as they are arrayed in the civil suit and the respondents 9 to 16 will be referred to as the third party/proposed defendants.

4. The suit has been filed against the defendants 1 and 2 for recovery of a sum of Rs.1,24,62,000/- with interests and for various other reliefs as narrated above. The defendants 3 to 9 have been formally made as party defendants.

5. It is the case of the plaintiff that the defendants 1 and 2 borrowed a loan of Rs.30,00,000/- on 15.05.2008 and executed a promissory note on 15.05.2008 itself in favour of the plaintiff. Besides the above, the 1st defendant also deposited title deeds pertaining to his property and created a mortgage by way of deposit of title deeds. Again in the month of January 2012, the defendants requested to extend the financial facility to the tune of Rs.75,00,000/-. Accordingly, the plaintiff disbursed a sum of Rs.50,00,000/- to the 1st defendant. The 2nd defendant executed necessary documents in this regard. The defendants 1 and 2 also deposited title deeds relating to their



property situated at Gandhi Nagar, Adyar in Chennai and created a mortgage by way of deposit of title deeds in favour of the plaintiff. The defendants 3 to 9 have been added as formal party defendants as they attached the properties of the defendants 1 and 2 pursuant to the orders of this court dated 14.08.2012 in a different proceedings.

6. Pending suit, the present application has been filed by the defendants 1 and 2 invoking the provisions of “third party procedure” Order VIIIA of CPC for the grant of leave to implead the respondents 9 to 16 as party defendants 10 to 17 mainly on the ground that the plaintiff is only an employee of one D.S.Velmurugan, a native of Madurai and the defendants 1 and 2 never executed any promissory note in favour of the plaintiff nor deposited any title deed.

7. The defendants 1 and 2/applicants have proceeded as if the entire transaction was between Velmurugan and the employer of the plaintiff. Accordingly several documents have been executed in respect of the properties situated in Thanjavur and Chennai. An agreement for sale was also executed in the said transaction. It is the further case of the defendants 1 and 2/applicants that tripartite agreement was also executed between the plaintiff and the defendant and one Vasudevan who owed money to the other defendants. The



said Vasudevan has paid a sum of Rs.79,00,000/- to the said Velmurugan on 23.05.2008. Accordingly, the defendants 1 and 2 discharged a sum of Rs.1,65,98,000/- to Velmurugan out of Rs.3,00,00,000/-. Hence, it is the contention of the defendants 1 & 2/applicants that despite discharge of loan to the said Velmurugan, the documents either executed or obtained were not returned to the applicants/defendants 1 and 2. The suit in O.S.No.8 of 2012 filed by Velmurugan on the file of the I Additional District Judge, Thanjavur, in respect of the property situated in Thanjavur got dismissed on 28.08.2017. The applicants made a complaint upon which an FIR was registered in FIR No.193 of 2012 on the file of the Central Crime Branch, Egmore, Chennai against Velmurugan and others. On challenge by way of revision in CrI.R.C.No.1305 of 2013 before this court, the FIR in Cr.No.193 of 2012 came to be quashed. On appeal to the Hon'ble Supreme Court by the defendants 1 and 2, while dismissing the SLP (Crl.) No.1042 of 2014 by order dated 07.01.2015, the Hon'ble Supreme Court granted liberty to the applicants to pursue appropriate remedies legally. Hence, it is the contention of the defendants 1 and 2 that they are entitled to redeem the title deeds which were handed over to Velmurugan and Viwswanathan and along with few other documents. Hence, they have come forward with the present application



seeking leave of this court to implead the respondents 9 to 16 as defendants 10 to 17 to the suit.

8. The said application was opposed by the plaintiff mainly on the ground that proposed defendants 10 to 17 neither contribute towards liability nor indemnify against any claim by the plaintiff. Hence, the application under Order VIII-A of CPC is not maintainable.

9. While denying the contention of the defendants 1 and 2 / applicants that they never executed any documents, the plaintiff contended that the allegations levelled by the defendants 1 and 2 against third party are independent transactions and they are no way connected to the present suit. The present application is nothing but a collusive one and thus, the right of the defendants 1 and 2 applicants against the third party cannot be decided. Hence, the plaintiff opposed the application.

10. Heard K. Shakespeare, learned counsel for the applicants/defendants 1 and 2 and Mr.R.Uma Shankar, learned counsel for the 1st respondent and also Mr.T.Raghavan, learned counsel for the 14th respondent/ 15th proposed defendant.

11. The learned counsel for the defendants 1 and 2 would submit that the proposed parties who are sought to be impleaded are the partners of the



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defendants 3 to 9 and out of various transactions took place between the defendants 1 and 2 and Velmurugan and one such suit filed by Velmurugan in O.S.No.8 of 2012 on the file of the I Additional District Judge, Thanjavur, was already dismissed. According to him, the plaintiff is none other than the employee of Velmurugan and, therefore, the defendants 1 and 2 are entitled to implead the respondents 9 to 16 as party defendants in the suit to establish their rights and to avoid conflict of judgements. The plaintiff having impleaded the respondents 2 to 8 as defendants 3 to 9 is entitled to bring all the partners of the defendants 3 to 9 to unravel the truth. All the documents were executed only at the instance of Velmurugan. The plaintiff is no way connected with the applicants. Therefore, they are entitled to invoke Order VIII-A of CPC against the proposed defendants.

12. The learned counsel in support of his submissions, placed reliance heavily upon the judgement of this Court in **Vestas RRB India Ltd v. Dammar Lines** [2008 (3) CTC 828]; **Venkata Krishna Naidu v. Narayana Swami Iyer** [AIR 1939 Mad 172]; **Thiruvannamalai Adhinam Sri Daivasigamani, In re** (68 LW 372).

13. The learned counsel for the plaintiff would on the other hand contend that it is not the case of the defendants 1 and 2 that the respondents 9



to 16 are contributors towards liability or they indemnify against any claim by the plaintiff. Therefore, the defendants 1 and 2 cannot invoke the procedure to establish their alleged defence in the suit. The reliefs sought against the third party make it very clear that it is an independent transaction. The applicants having failed in various other criminal proceedings have resorted to file this application in order to delay and protract the very suit proceedings. According to him, the very suit itself has been filed based on loan transactions and promissory notes and deposit of title deeds by the defendants/applicants. The proposed defendants who are third parties have nothing to do with such transactions. Such being the position, the applicants have no right to invoke third party procedure.

14. I have considered the rival submissions and perused the materials available on record carefully.

15. Now the points that arises for consideration in this application are:

- (1) Whether the applicant is entitled to invoke third party procedure to establish their defence? and
- (2) Whether the proposed parties are liable to make any contribution or to indemnify against the defendants 1 and 2 viz., the applicants herein?



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16. The suit has been filed for recovery of a sum of Rs.1,24,62,000/- based on the promissory notes dated 15.05.2008 and 18.01.2012 respectively and followed by mortgages created by way of deposit of title deeds. The defence of the defendants 1 and 2 appear to be that the plaintiff is mere name-lender and employed by Velmurugan with whom the defendants 1 and 2 had loan transactions from the year 2005. According to the defendants 1 and 2, at the time of such loan transactions, at the instance of the said Velmurugan, they have executed several documents including signed blank promissory notes and signed blank papers. According to them, despite discharge of loan amounts, the documents handed over by the defendants 1 and 2 have not been returned to them. The very defence of the defendants 1 and 2/applicants is total denial of the suit claim. It is relevant to note that on a similar set of facts, the applicant had exhausted remedies under criminal law by launching criminal prosecution. The FIR registered in Crime No.193 of 2012 on the file of the CCB, Egmore, Chennai was thoroughly investigated by the Crime Branch and a negative report was filed before the Chief Metropolitan Magistrate, Egmore, Chennai. The said negative report was challenged by way of protest petition by the applicant in Crl.M.P.No.5358 of 2013 before the learned Chief



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Metropolitan Magistrate and the learned Chief Metropolitan Magistrate, Egmore, Chennai, dismissed the protest petition and accepted the closure report. As against the dismissal of the protest petition, the defendants 1 and 2 filed a criminal revision before this Court in CrI.R.C.(MD) No.1305 of 2013 and this Court by order dated 24.10.2013 dismissed the revision. Aggrieved by the same, the defendants 1 and 2 filed Special Leave Petition before the Hon'ble Supreme Court in SLP No.1042 of 2014 and the Hon'ble Supreme Court by order dated 07.01.2015 while dismissing the SLP was pleased to observe as under:-

“However, in the event, the petitioner chooses to avail of the appropriate remedies, the observations of the High Court in the impugned judgement may not come in the way.”

Not stopping with that, once again the defendants 1 and 2/applicants initiated a private complaint in C.C.No.41 of 2015 on the file of the learned Judicial Magistrate, Thanjavur by separating the cause of action relating to the property situated in Thanjavur. The said private complaint was also quashed by the Madurai Bench of this Court, by order dated 09.03.2020 made in CrI.O.P.(MD) Nos.13228 of 2015 and 19634 of 2016 taking note of the fact



that the allegations in the private complaint were similar that of the allegations raised in Crime No.193 of 2012 on the file of the CCB, Egmore, Chennai.

Thereafter, once again the applicants filed another private complaint in C.C.No.1828 of 2019 on the file of IX Metropolitan Magistrate, Saidapet, Chennai. Challenging the same, a petition in Crl.O.P.No.16241 of 2022 was filed before this Court by Velmurugan and 2 others, and the same was also allowed on 13.09.2022 and the same private complaint was quashed. After exhausting all the remedies on the criminal side, the defendants 1 and 2/applicants have now come up with the present application seeking leave for the invocation of third party procedure under Order VIII-A of CPC. Order VIII-A has been incorporated by way of Madras amendment. It would be relevant to extract hereunder the provisions contained under Order VIII-A of CPC:-

“Order VIII-A: Third Party Procedure

1. Third party notice.— Where a defendant claims to be entitled to contribution from or indemnity against any person not already a party to the suit (hereinafter called a third party notice) to that effect, sealed with the seal of the Court. the notice shall state the nature and grounds of the claim. Such notice shall be filed into Court with a copy of



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the plaint and shall be served on the third party according to the rules relating to the service of summons.

2. Effect of notice.— The third party shall, as from the time of the service upon him of the notice, be deemed to be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

3. Default by third party.— If the third party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party may enter appearance in the suit on or before the date fixed for his appearance in the notice. If he does not enter appearance he shall be deemed to admit the validity of the decree that may be obtained against such defendant, whether by consent or otherwise and his own liability to contribute or indemnity, as the case may be, to the extent claimed in the third party notice provided always that a person so served and failing to appear may apply to the Court for leave to appear, and such leave maybe given upon such terms, if any, as the Court shall think fit.

4. Procedure on default.—Where the third party does not enter appearance in the suit and the suit is decreed by consent or otherwise in favour of the plaintiff, the Court



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may pass such decree as the nature of the case may require, against the third party and in favour of the defendant on whose behalf notice was issued, provided that execution thereof shall not be issued without leave of the Court until after satisfaction by such defendant of the decree against him.

5. Third party directions.— If the third party enters appearance the defendant on whose behalf notice was issued may apply to the Court for directions; and the Court may, if satisfied that there is a question to be tried as to the liability of the third party to make the contribution or pay the indemnity claimed, in whole or in part. order the question of such liability, as between the third party and the defendant giving the notice to be tried in such manner, at or after the trial of the suit, as the Court may direct; and if not so satisfied, may pass such decree or order as the nature of the case may require.

6. Leave to defend.— The Court may upon the hearing of the application mentioned in Rule 5. give the third party liberty to defend the suit upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered or amendments to be made, and give such directions as appear proper for the most convenient determination of the question or



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questions in issue, and as to the mode and extent in or to which the third party shall be bound or made liable by the decree in the suit.

7. Costs.— The Court may decide all questions of costs as between the third party and the other parties to the suit, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

8. Questions between co-defendants.— Where a defendant claims to be entitled to contribution from or indemnity against any other defendant to the suit, a notice may be issued and the same procedure shall be adopted for the determination of such questions between the defendants as would be issued and taken, if such last mentioned defendant were third party; but nothing herein contained shall prejudice the right of the plaintiff against any defendant in the suit.

9. Further parties.— Where any person served with a third party notice by a defendant under these rules claims to be entitled to contribution from or indemnity against any person not already a party to the suit, he may, by leave of the Court, issue a third party notice to that effect, and the preceding rules as to the third party procedure shall apply mutatis mutandis to every notice so issued and the expressions “third party notice” and “third party” in these



rules shall apply to and include every notice so issued and every person served with such notice respectively."

17. A careful perusal of the above provisions make it very clear that the defendants 1 and 2 must show that there exists *prima facie* case and there are bonafide claims against the third party. From the nature of the application, if it is found that the claim is outside contribution or indemnity one cannot invoke third party procedure. In the case of **Thiruvannamalai Adhinam Sri Daivasigamani, In re** (68 LW 372), this court has held as follows:-

“10. The object of the third party procedure is twofold: First to prevent the same question from being tried twice with possibly different results; *Benecke v. Frost* (1876) 1 Q.B. 422, *Re Salmon* (1889) 42 Ch.D. 360; and secondly, to prevent multiplicity of action and to enable the court to settle disputes between all the parties in one action: *Baxter v. Franc*, (1895) 1 Q.B. 593, , *Barclay's Bank v. Tom*, (1923) I.K.B. 221, 223, 225; *Venkatakrishna v. Narayanaswami*, (1988) 2 M.L.J. 886 – 50 L.W. 910. The third person is to be cited to take part in the original litigation and so to be bound by the decision on that question once for all: *Venkatakrishna v. Narayanaswami* (5).

11. The third party procedure is applicable



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only to cases of contribution or indemnity. In effect a claim to contribution is a claim to a partial indemnity. Contribution is bottomed and fixed on general principles of justice and does not spring from contract, though contract may qualify it: *Dering v. Winchelsea*, 1 Cox. 818. A right to contribution may be created by statute. A right to indemnify may arise (i) from express contract; (ii) from some statute; or (iii) implied from some principle of law. A right to indemnity exists where there is an obligation either a law or in equity upon one party to indemnify the other: *Eastern Shipping Co., v. Quah Beng Kee*, (1924) A.C. 177; *Birmingham and District Land Company v. London and N.W. Ry* (1885) 84 Ch. D.261. An insurer can be added as a third party in an action for personal injury in a road accident as the defendant is entitled to indemnity from that party. For a discussion of the scope of the third party procedure on the Original Side, See *Krishnaswami Aiyar v. Raghavaiah Chetty*, 58 M.L.J. 679 and *Venkatakrishna v. Narayanaswami*, (1938) 2 M.L.J. 886.”

18. In the case of **Vestas RRB India Ltd v. Dammar Lines** [2008 (3) CTC 828] this court has held in para 27 that thus it is clear that Order 8-A CPC provides only an additional remedy to a defendant who is entitled to



contribution or indemnity from a third party.

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19. In the case of **Venkata Krishna Naidu v. Narayana Swami Iyer** [AIR 1939 Mad 172] taking note of the fact that whether the property belongs to the trustor to Venkataraghavalu Chetti is a question which is common not only between the plaintiff and the 1st defendant but also the 1st defendant and Rajarama Sastri, the court has held that the third party has to be impleaded.

20. In the case of **T.Leonard Thangaprakasam v. C.Ramaian [1997 (3) L.W. 313]** this court has held Order VIII-A, Rule 1 of CPC cannot be invoked where the claim is not one for indemnity or contribution and that in the case suit on a promissory note where the defendant filed written statement denying the execution of pro-note would tantamount to benami, which cannot be entertained in the case of a promissory note and no question of indemnity or contribution could arise. In para 7, it has been held that Order VIII-A will apply only if the defendant is entitled to claim indemnity or contribution and that in this case the defendants have filed written statement denying the execution of pro-note in favour of the plaintiff.

21. Considering the well settled provisions as indicated above, unless there is contribution or indemnity from the third party, as a matter of right, the defendants cannot invoke the third party procedure under Order VIII-A of



CPC. The defence of the defendants 1 and 2 is total denial and the applicants try to achieve what they cannot do directly by invoking third party procedure.

The very pleading of the defendants 1 and 2/applicants makes it clear that there were several registered documents executed by the applicants and sale deed was also executed in 2011. Now, invoking the third party procedure, they seek a declaration declaring the sale deed dated 14.11.2011 as sham and nominal one, which is impermissible under law. After the period of limitation, the applicants/defendants 1 and 2 had, in fact, without approaching the civil court all these years against third party in whose favour several documents were executed, have come up with the present application only in order to get over the period of limitation. The very application itself is only in the nature of establishing the defence in the main suit. That cannot be permitted under the third party procedure. Third party procedure can be invoked only when there is contribution or indemnity from the third party. It is not the case of the applicants that proposed parties are liable to contribute against the claim of the plaintiff and also they are liable to indemnify. Such being the position, this court is at a loss to understand as to how the defence of the defendants 1 and 2/applicants could be established by invoking third party procedure. It is for the defendants 1 and 2 to establish their defence by examining the relevant



witnesses and producing the relevant documents to substantiate their defence in the trial in the main suit. If such contentions of the defendants in the civil suit are permitted, then there would be no end to civil litigation. In such cases, the defendants in the suits, in order to delay the suits, may simply resort to such third party procedure which is in fact not the object of the amendment brought in by way of Order VIII-A-Third Party Procedure. Only when the defendants 1 and 2 claim to be contributed or indemnified from third party to the suit, such third party can be brought on record to avoid multiplicity of the proceedings and not in all matters for the sake of substantiating the defence. Merely because defendants 3 to 9 were added as formal defendants since they also proceeded against the suit property in a different proceedings, as a matter of right, the defendants 1 and 2/applicants cannot invoke Order-VIII-A. Hence, this court do not find any merit in the application and the application is liable only to be dismissed.

In the result, the Application is dismissed.

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Pre-delivery Order
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C.S.No.79 of 2018

13..02..2024