

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

APO/80/2024

**WEST BENGAL STATE ELECTRICITY BOARD
VS
ASHOK KUMAR JAIN AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Jaydip Kar, Sr. Adv.
Mr. Debanjan Mukherjee, Adv.

For Respondent no. 1 : Mr. Anubhav Sinha, Adv.
Ms. Arunima Lala, Adv.
Mr. Radheshyam Tiwari, Adv.
Mr. Shirsho Banerjee, Adv.

For O/L : Ms. Tanushree Das Gupta, Adv.

HEARD ON : 09.06.2026

DELIVERED ON : 09.06.2026

DEBANGSU BASAK, J.:-

1. Supplementary paper books filed in Court be taken on record.
2. Appeal is at the behest of the defendant no. 1 in a suit and directed against the judgment and order dated January 22, 2024.
3. By the impugned judgment and order, learned Single Judge added the respondent no. 1 to the pending suit.

- 4.** Learned Senior Advocate appearing for the appellant draws the attention of the Court to the plaint in which, the respondent no. 1 was allowed to be added as a party, by the impugned judgment and order. He submits that, the suit was filed by a company which is presently in liquidation. He refers to the prayers made in the plaint. He also refers to the cause title of the plaint. He submits that, there are two defendants in the suit. The suit related to a bank guarantee dated September 7, 1978 and the extension thereto. Plaintiff in the suit, sought declaration with regard to such bank guarantee, delivery and cancellation of the same as well as perpetual injunction.
- 5.** Learned Senior Advocate appearing for the appellant submits that, the respondent no. 1 traces its claim to one Mr. R. C. Jain, whom the respondent no. 1 claimed to be the majority shareholder and Director of the plaintiff. He submits that, the plaintiff, after filing of the suit went into liquidation. The Official Liquidator is representing the plaintiff. He refers to the provisions of the Companies Act, 1956 and submits that, the Official Liquidator is to represent the contributories and all stakeholders of the company (in liquidation). He contends that, in no perspective, the respondent no. 1 can be considered to be either a necessary or a proper party to the suit.
- 6.** Learned Advocate appearing for the respondent no. 1 submits that, the Official Liquidator was misconducting the suit. It was the respondent no. 1 who from time to time appeared in the suit and

was heard. He draws the attention of the Court to the various orders passed in this regard.

- 7.** Learned Advocate appearing for the respondent no. 1 draws the attention of the Court to the recording in the impugned judgment and order and in particular to paragraph 12 thereof. He submits that, the respondent no. 1 settled with the bank and therefore, the developments of the affairs of the plaintiff to the suit, subsequent to its liquidation, are known to the respondent no. 1.
- 8.** The applicant is required to establish that it is a necessary party to the suit. By a necessary party one understands that the applicant is without whom no effective and enforceable decree can be passed by Court. The absence may lead to the dismissal of the suit.
- 9.** In the facts and circumstances of the present case, the respondent no. 1 is neither a necessary nor a proper party to the suit. No rights of the respondent no. 1 would stand affected if the suit is decreed in favour of the plaintiff.
- 10.** It is contended on behalf of the respondent no. 1 that, the respondent no. 1 settled the dues of the bank. That *per se*, does not transform an alleged contributory to be either a necessary or a proper party in a suit relating to the enforcement of a bank guarantee.
- 11.** A company, prior to its liquidation, as the plaintiff filed the suit seeking declaration, delivery and cancellation of a bank guarantee and extension thereof. There were two parties to the suit namely, West Bengal State Electricity Board and Punjab National Bank.

- 12.** The suit was filed in 1983. Subsequent to the filing of such suit, the plaintiff company went into liquidation by an order dated August 14, 1989. Official Liquidator stood substituted as the plaintiff in such suit.
- 13.** Both the defendants namely, defendant no. 1 being West Bengal State Electricity Board as well as the defendant no. 2 being Punjab National Bank were underwent changes. The appellant was formed out of the assets of the defendant no. 1 namely, West Bengal State Electricity Board.
- 14.** Respondent no. 1 before us claims itself to be a contributory by virtue of succeeding to the shares held by his deceased father namely, R. C. Jain. A contributory of a company, *ipso facto*, is neither a necessary nor a proper party in a suit filed by the company of such contributory on the principle that, a company and its contributories are separate legal entities. There is nothing on record to establish that, any right of the respondent no. 1 stands affected by the Bank Guarantee or the reliefs prayed for in the suit, if granted or even if not granted. There is no privity of contract between the respondent no. 1 and the defendants to the suit. Suit did not assume a representative character in the plaintiff referring an order of winding up.
- 15.** Grievances of the respondent no. 1 as to the alleged misdeeds of the Official Liquidator can be agitated before the appropriate forum namely, the Company Court or where the winding-up petition is pending. Simply, on the ground that, the Official Liquidator is

allegedly misconducting the proceedings is not sufficient for a contributor, assuming that the respondent no. 1 can be treated to be so, is entitled to be added as a party to a suit.

16. Significantly, the impugned judgment and order permitted the respondent no. 1 to be added as a party to the suit without specifying whether, the respondent no. 1 will be added as a defendant or as the plaintiff. No reasons are ascribed as how the respondent no. 1 is treated as necessary or a proper party to the suit.
17. In such circumstances, the impugned judgment and order dated January 22, 2024 is set aside.
18. APO/80/2024 is allowed, with no order as to costs.

(DEBANGSU BASAK, J.)

19. I agree.

(MD. SHABBAR RASHIDI, J.)