

(1999) 12 MAD CK 0032

In the Madras High Court

Case No : C.R.P.Nos. 3892 and 3893 of 1998 and C.M.P.Nos. 19584 and 19585 of 1998 and 415 of 1999

C. Shanmugam

APPELLANT

Vs

N. Radhkrishnan and others

RESPONDENT

Date of Decision : 11-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1999) 12 MAD CK 0032

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. P. Seshadri, for the Appellant; Mr. A.L. Somayaji and Mr. Gopalakrishnan for Ms. Jasmeen, for the Respondent

Judgement

1. Petitioner is a third party, but who claims to be affected by interim order passed in the suit. Therefore, he filed an application for impleading

himself before the Lower Court which was refused to be accepted by the lower Court.

2. These revisions are filed against the order of the lower Court, refusing to receive the application .

3. The facts in these cases are simple. First respondent in these revisions filed O.S.No. 4803 of 1998 on the file of the XVIII Assistant Judge, City

Civil Court, Madras for declaration that the resolution passed by the defendant in the suit dated 3.7.1998 suspending him as a Director is null and

void and for a consequential permanent injunction, restraining the defendant from interfering with the functions of the plaintiff as a Director and for

consequential reliefs. In that suit, the first respondent moved I.A.No. 11207 of 1998 for injunction.

4. The first defendant is Puraswalkam Santhatha Sanga Limited, in which the plaintiff is a Director. For omissions and commissions alleged to have been committed by the plaintiff, the resolution was passed on 3.7.1998 suspending him from Board of Directors. In the vacancy that arose due to suspension of the plaintiff, the petitioner herein was co-opted by Resolution dated 6.7.98. Without impleading the petitioner, suit was filed and interim order obtained. It is said that interim order was confirmed after hearing both sides and the matter is pending appeal preferred by the defendant. It was at this stage, the petitioner herein filed two applications before the lower Court. One, to implead him in the suit and the other to implead him in I,A,.No. 11209 of 1998. Both these applications were refused to be entertained by the lower Court on the ground that they were not maintainable. While refusing the applications, the lower Court has found that the petitioner has been co-opted in the place of the plaintiff. But, it refused to receive the applications on the ground that there is difficulty to prove the relevant materials and it is not open for a third party to seek an order to implead himself and to prove the case of the defendant. The lower Court further found that the I.A. itself is an indirect way of dragging the matter by the defendant. The applications are lacking in bona fides and therefore, rejected.

5. The learned Judge of this Court ordered "Notice of motion" and interim stay was also ordered for a period of two weeks. After service, I heard the counsel on both sides.

6. The petitioner has been substituted in the place of the plaintiff before the suit. Naturally, he is the affected person. The suit was instituted without impleading him. It is undisputed fact that if the suit is decreed, the person affected will be not only the Nidhi, who is the defendant, but also the present petitioner.

7. It is true that even without the petitioner, the suit could be entertained since the question to be decided in the suit is whether the Resolution dated 3.7.1998 is valid or not. On that date, the petitioner did not have any interest. It is only consequent to the vacancy that arose due to suspension of the plaintiff and a Resolution had to be passed on 6.7.98 whereby the present petitioner has been co-opted. It is therefore clear that the petitioner is a person who is interested in the result of the suit and who will also be

affected by the decision. Eventhough, the suit could be decided without him, he being the affected person, is entitled to come on record.

8. Learned Senior Counsel for the first respondent submitted that when the issue in the suit is only with regard to the validity or invalidity of the Resolution dated 3.7.1998, the petitioner is not entitled to be heard. I do not think the submission of the counsel could be accepted. The petitioner is also entitled to contend that the plaintiff is not entitled to continue as Director and all the proper defence also could be taken by him, and contest the suit.

9. Learned counsel for the petitioner submitted that there is a possibility of the Nidhi not putting forward proper defence which is likely to affect his right as a Director. He wanted to protect his interest independently, though the claim is based only on the Resolution dated 6.7.98.

10. In view of the above circumstances, I feel the petitioner is also entitled to be heard in the suit. In the decision reported in M/s. Aliji Monoji and

Co. Vs. Lalji Mavji and others, heir Lordships held as follows:

It is settled law by catena of decisions of this Court that where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted.

Following the above dictum of the Honourable Supreme Court, I feel that for complete and effectual adjudication of the suit, petitioner is a proper party and is entitled to be heard.

11. In the result, I direct the lower Court to register the impleading applications. The order refusing to receive the impleading applications in the suit and I.A. is not proper. I hold the petitioner is to be impleaded both in the suit and I.A. and he will be impleaded as a second defendant in the suit as well as in the I.A.

12. In the result, these revisions are allowed setting aside the order of the lower Court. There will be no order as to costs. Consequently,

C.M.P.Nos. 19584 and 19585 of 1998 and C.M.P. Nos. 415 and 416 of 1999 are dismissed.