(2014) 02 MAD CK 0243

In the Madras High Court

Case No : Appl. No. 4152 of 2013 in C.S. No. 231 of 1998

P. Gurusamy APPELLANT

Vs

Shriram Transport Finance Limited RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2014) 4 MLJ 351

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—The applicants are third parties to the suit. They filed this Application to implead themselves in the suit filed by the respondents 1 and 2 herein. The respondents 1 and 2 filed C.S. No. 231 of 1998 for the recovery of a sum of Rs. 1,31,52,250 with future interest from the respondents 3 to 8.

2. The case of the respondents 1 and 2/plaintiffs is that the respondents 1 and 2 provided finance to the respondents 3 to 8 and the respondents 3 to 8 also deposited the title deeds in favour of the respondents 1 and 2/plaintiffs as a security for the finance provided by the respondents 1 and 2 and therefore, the suit was filed for the recovery of the amount on the basis of the equitable mortgage created by the respondents 3 to 8.

3. It is the alleged by the applicants that they were employed in the third respondent mill for a period ranging from 10 to 25 years and their gratuity claims were not settled by the third respondent and therefore, they approached the Assistant Commissioner of Labour under the provisions of Payment of Gratuity Act 1972 and by order dated 20.1.2003, their gratuity was computed and the order passed by the Assistant Commissioner of Labour has also become final. The Assistant Commissioner of Labour also issued Revenue Recovery Certificate under the Payment of Gratuity Act and the District Collector of Dindigul was also

requested to recover the money due to the applicants towards gratuity under the Revenue Recovery Proceedings and till date that money was not paid. Meanwhile, they came to know that pursuant to the order passed in A. 3847 of 2001 in the above suit, the property belonging to the third respondent mill was sought to be auctioned and as the gratuity of the employee has got the first charge over the properties of the management, the auction proceedings must be utilized only towards the discharge of the dues payable to the applicants under the Payment of Gratuity Act and therefore, this Application was filed to get themselves impleaded in this suit.

4. Respondents 1 and 2 filed a detailed counter affidavit stating that the applicants cannot claim any interest in the suit filed by the plaintiffs and the suit was filed on the basis of the hypothecation deed under the mortgage created by the respondents 3 to 8 while availing finance from the plaintiffs and therefore, the plaintiffs have got the first charge over the machineries as well as the properties. Therefore, they filed Application No. 3846 of 201 for selling the machineries belonging to the third respondent and that was ordered and that was also upheld in O.S.A. No. 125 of 2006. Nevertheless, the machineries could not be sold in public auction. At this stage, this Application is filed by the applicants and applicants have got other efficacious remedy to realise their gratuity dues through provisions of the Payment of Gratuity Act and even according to the applicants Revenue Recovery Certificate was issued to the District Collector to realise the gratuity dues and therefore, the present application filed by the applicants in the suit are not maintainable and applicants have no interest in the suit claim.

5. Mr. Balan Haridas, learned counsel appearing for the applicants, submitted that the Court has got wide powers to implead any party at any stage of the proceedings and though under the Payment of Gratuity Act, machineries are provided for the realization of the gratuity amount and even after the issuance of Revenue Recovery Certificate, the applicants were not able to secure their gratuity dues and as per the provisions of the Payment of Gratuity Act, the employees have got the first charge over the properties of the company in respect of the dues payable under the Payment of Gratuity Act and other Acts, and if the plaintiffs were permitted to sell the properties and realise their dues, that will cause serious prejudice to the applicants. Therefore, the application was filed to implead them as parties to the suit.

6. On the other hand, Mr. K. Harishankar, learned counsel appearing for the respondents 1 and 2, submitted that the applicants are neither necessary nor proper parties to the suit claim and the plaintiffs have got first charge over the machineries and also over the lands for the loans advanced by them and the plaintiffs are secured creditors and before paying the secured creditors, the applicants cannot claim any right over the sale proceeds and therefore, they are not necessary parties nor proper parties to be impleaded. He relied upon the judgments reported in the matter of Narayan Chandra Garai and Others Vs. Matri

Bhandar Pvt. Ltd. and Another, and in the matter of H.M. Kassim and Others Vs. The South Indian Bank Ltd. and Others, in support of his contention.

7. Therefore, we will have to see whether the applicants are to be impleaded in the suit filed by the respondents 1 and 2 and whether they are proper and necessary parties?

8. As stated supra, respondents 1 and 2 filed the suit for recovery of money and also for sale of the immovable properties and machineries for the amount due and payable by the respondents 3 to 8. In such a suit, can the applicants be added as necessary or formal parties, is the question to be considered in this Application.

9. In the judgment reported in the matter of Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., , the Hon''ble Supreme Court held that wages and emoluments to be paid to the workers should rank in priority and therefore, before dealing with stakes of the company, the workers'' dues must be considered.

10. In the judgment reported in National Textile Workers'' Union and Others Vs. P.R. Ramakrishnan and Others, the Hon''ble Supreme Court held that the workers of a company had a right to be heard in relation to an application for the winding up of the company as the future of the workers was at stake if winding up proceedings is ordered. This was followed in the judgment reported in State Bank of India v. Podar Mills Ltd., wherein, while the suit was pending, a trade union of the workers of the company sought to get themselves impleaded as party to the suit, under Order I Rule 10(2). Relying upon the judgment of the Hon''ble Supreme Court reported in National Textile Workers Union v. Ramakrishnan (supra), it was observed that the question whether a person has interest in the subject matter of the suit cannot be considered in vacuum. The nature of the reliefs, their impact on the person seeking to be added as a party and the context in which the claim to be joined arises, are factors of fundamental importance.

11. In the judgment reported in the matter of Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, it was held that the Industrial Tribunals are enabled to create new rights and liabilities and no relationships which an ordinary Civil Court is power less to do. The Civil Court cannot be allowed to run astray or outside the limits set for them in the matter of adjudication of dispute before them and they are bound by the principles of law as well as the Code of Civil Procedure.

12. In the Judgment reported on in the matter of Western India Automobile Association v. Industrial Tribunal, 1949 I LLJ 245 it was held as follows:

The award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations.

13. In the judgment reported in the matter of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, it was held as follows:

In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

These judgments were considered in the judgment reported in H.M. Kasim and Others v. South Indian Bank Ltd. and Others (supra) and it was held that in the suit for recovery of money, the employees are not necessary parties and they are not proper parties to be impleaded.

14. In the judgment reported in the matter of Vaithilinga Pandara Sannidhi Audhinakarthar Tiruvaduthurai Adhinam Vs. Sadasiva Iyer and Others, learned Judge relied upon the judgment reported in the matter of Norris v. Beazley (1877) 2 CRD 80 and held that when there is no cause of action alleged against the applicant and no relief can be claimed against him and the applicant is not a proper party to the suit. In the aforesaid judgment, which was relied upon by the Hon''ble Judge of this Court, Justice Denman says-

I am quite clear, however, that the Court ought not to bring in any person as defendant against whom the plaintiff does not desire to proceed unless a very strong case is made out, showing that in the particular case justice cannot be done without his being brought in.

15. In the judgment reported in the matter of Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, it is held that eventual interest of a party in the fruits of litigation cannot be held to be a true test of impleading parties according to the Code of Civil Procedure.

16. In the judgment reported in the matter of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, the scope of Order 1, Rule 10 CPC was considered as follows:

12. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject

to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, , reiterated the classic definition of ''discretion'' by Lord Mansfield in R. v. Wilkes 1770 (98) ER 327, that ''discretion'' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, ''but legal and regular''. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

17. In the judgment reported in Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, , broad principles are stated as follows:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.

18. Applying these principles to the facts of the case, in my opinion, the applicants can be considered as proper parties. It is true that the applicants obtained an order towards their gratuity claim and under the provisions of the Payment of Gratuity Act, they are entitled to enforce the same against the properties of the firm and the present suit is also filed by the plaintiffs for the realization of their amount and they also sought for the sale of the machineries and immovable properties which were mortgaged with the plaintiffs/respondents 1 and 2.

19. As held by the Hon''ble Supreme Court, a necessary party is a person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court and a proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and terms, though he may not be a person in favour of or against whom, a decree has to be made. Therefore, the applicants, in my opinion, can be termed as proper parties though no decree can be made against them in the suit filed by the respondents 1 and 2. But, their presence would enable the Court to completely, effectively and properly adjudicate upon all matter involved in the suit. As stated supra, the applicants obtained order towards gratuity claim and they are entitled to enforce the claim over the properties of the firm and they have got a statutorily first charge over those properties of the firm and the plaintiffs though claim to be mortgagees and entered into an hypothecation agreement over the machineries, their claim is subject to the amount payable to the workers under the Payment of Gratuities Act. Admittedly, an application was filed to sell machineries and the suit is also filed to bring the properties to sale to satisfy the money decree that may be passed against the applicants. Therefore, the applicants are proper parties in the suit filed by the respondents 1 and 2 and hence, they are entitled to be impleaded, and if the respondents 1 and 2/ plaintiffs were permitted to proceed with the sale of the machineries and immovable properties of the firm, having regard to the fact that the applicants have got the first charge over the properties of the firm, that would cause serious prejudice to the third parties if the applicants are not made parties to the suit. Hence, I hold that the applicants are proper parties and therefore, they are entitled to be impleaded.

In the result, the Application is allowed.

