
(2009) 04 RAJ CK 0072
In the Rajasthan High Court

Shimnit Utsch India Pvt. Ltd. and Another	APPELLANT
Vs	
State of Raj. and Others	RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

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

Citation : (2009) 4 RLW 3494

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—This case has come up on an application for impleadment filed by Promuk Hoffman International Ltd. (` the applicant", for short).

2. According to the applicant, it was one of the participants/ bidders in the tender floated by the State of Rajasthan for affixing of High Security Registration Plates on all types of vehicles in the State. Since the said tender was not granted to the applicant, but was granted to the petitioner, Shimnit Utsch India Ltd., the applicant had filed a writ petition, S.B. Civil Writ Petition No. 3134/2006 before this Court. In the said writ petition, the applicant had challenged the illegal grant of contract to the petitioner. However, vide judgment dated 12- 8-2008, a Single Bench of this Court had dismissed the said writ petition. Thereafter, the applicant has filed a Special Appeal, D.B. Civil Special Appeal No. 1387/2008, which is presently pending before a learned Division Bench of this Court.

3. On the other hand, in the present writ petition, the petitioner has challenged the order dated 6-3-2009, whereby the office of Transport Commissioner, has suspended the agreement to supply and provide services for affixing high security registration plates on motor vehicles.

4. Mr. Paras Kuhad, the learned Counsel for the applicant, has frankly conceded that although the applicant is not a necessary party to the writ petition, but nonetheless it is a proper party. According to the learned Counsel initially, it was

the applicant, who had questioned the grant of contract by the Government to the petitioner, in the writ petition filed by the applicant. In the said writ petition, the applicant had exposed the lapses committed by the present petitioner, as well as the omissions and illegal action committed by the State. Since, it is the applicant, who blew the whistle and questioned the grant of contract in favour of the petitioner, it is the applicant who is in a position to shed light on the entire controversy enveloping the grant/ suspension of the contract. Since the applicant would be able to assist the court in its search for truth, the applicant should be heard by this Court.

Secondly, the purpose of Order 1 Rule 10 CPC is to enable the court to seek assistance of such a person who can enable the court to effectually and completely adjudicate and settle all the issues involved in a case. Since, the applicant is in a position to shed light on the controversy involved, the Court should permit the applicant to assist the Court while adjudicating the writ petition.

Thirdly, in another application moved by one Chandra Bihari Sharma, who had filed criminal complaint before the Special Judge, Anti-Corruption Cases, Jaipur against the present petitioner, vide order dated 30-3-2009, this Court had permitted Chandra Bihari Sharma to appear as an intervenor. According to learned Counsel, the case of the applicant is on a better footing than the case of Chandra Bihari Sharma. Therefore, the applicant is a proper party which should be arrayed as party respondent.

5. On the other hand, Mr. S.M. Mehta, Senior Advocate and the learned Counsel for the petitioner, has vehemently opposed the application of the applicant. According to learned Counsel the dispute is strictly between the petitioner and the State Government. The applicant is a stranger to the said dispute. Secondly, since no relief is being asked by the petitioner against the applicant, the applicant is not a necessary party to the present writ petition. Thirdly, while relying on the case of *Kasturi Vs. Iyyamperumal and Others*, , learned Counsel has argued that as the petitioner is not a necessary party, therefore it should not be arrayed as a party respondent. Fourthly, in case the applicant is arrayed as party respondent the scope of controversy would unnecessarily be enlarged. For, the applicant would try to revive all the contentions that it had raised before the Single Bench, and which have been dismissed by the learned Single Bench. Therefore, according to the learned Counsel the applicant is trying to resurrect the controversy and the issues which have already been decided by the learned Single Bench, through the subterfuge of being impleaded as a proper party.

6. In rejoinder, Mr. Kuhad has submitted that the anxiety of learned Counsel for the petitioner that the controversy would be enlarged is misplaced. The applicant will confine his arguments only to the controversy involved in the present writ petition. Moreover, since the decision of this writ petition may affect the decision of special appeal, pending before the learned Division Bench, the applicant should be heard before the present petition is decided.

7. Heard learned Counsel for the parties and perused the material available on record.

8. If the aim of the Judiciary is to do justice to the people, the purpose of judicial scrutiny is to discover "the truth". The couplet of Sant Kabir prescribing that "Knowledge should be taken, even if it comes from `a low caste person" ", is equally applicable to the search for truth by the Judiciary. Order 1 Rule 10 CPC, acknowledges the commitment of the judicial process towards "truth". Therefore, the Court should not leave any stone unturned in its search for truth.

9. In the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, the Apex Court had made a distinction between "necessary party" and a "proper party" in the following words:

A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

10. Admittedly, in the writ petition filed by the applicant, the applicant had challenged the grant of contract by the State to the petitioner. In the said writ petition, the applicant had questioned the action and omission of the State. In the writ petition it had alleged that some of the obligations, which were to be complied by the petitioner, in the present case, had not been complied with by it. Subsequently, prima facie the State Government itself came to the conclusion that the petitioner, in the present case, has failed to comply with some of the obligations under the contract. Therefore, the State has passed the impugned order dated 6-3-2009. Thus, obviously, the applicant is well versed with the facts and circumstances, which led to grant of contract to the petitioner. Agreeing with lacunae, pointed out by the applicant, the State has passed the impugned order. The applicant is also in a position to buttress the case of the State. Hence, it is in a position to bring out the facts which will help the Court in effectually and completely adjudicating the issues, in doing complete justice to the controversy involved in the present case. Since, the applicant will help this Court in search for "truth", there is no reason to deny the applicant his request for being impleaded as party respondent in the present case.

11. The learned Counsel for the petitioner has relied upon the case of Kasturi (supra) to argue that the applicant is not a necessary party. However, as stated above, Mr. Kuhad had frankly conceded before the Court that, indeed, he is not a necessary party in the writ petition. The entire thrust of his arguments has been that he is proper party. Thus, the case of Kasturi (supra) does not come to the rescue of the petitioner. Moreover, the case of Kasturi (supra), dealt with a suit for specific performance of the contract, and the issue that arose before the Supreme Court was, "as to who is necessary party in a suit for specific performance"? Thus, the case dealt with "private law" and not with "public law". However, the present writ petition deals with "public law", where the petitioner is

challenging the action of the State. Therefore, a person who can assist the court in resolving the issues, would be a proper party. Hence, the case of Kasturi (supra) is distinguishable on the basis of factual matrix. Furthermore, in the case of Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, , the Hon"ble Supreme Court has explained the case of Kasturi (supra) and has held that it cannot be laid down as an absolute proposition that whenever suit for specific performance is filed by A against B, a third party C, can never be impleaded in that suit. If C can show a fair semblance of title or interest he can certainly file an application for impleadment. Therefore, the law laid down in Kasturi (supra) does not have universal application. Further, the present case does not deal with specific performance of contract. Thus, the case of Kasturi (supra) is absolutely inapplicable in the present case.

12. Moreover, this Court cannot lose sight of the fact that vide order dated 30-3-2009, this Court had already permitted Chandra Bihari Sharma, a person, who had merely filed criminal complaint against the present petitioner, to appear as an intervenor. Surely the case of applicant is on better footing, than the case of Chandra Bihari Sharma. Since, the applicant is well equipped and has a sufficient knowledge about the process of tender, about the grant of contract, and about the alleged lacunae of the petitioner, which forms the basis of the impugned order, the applicant is in a better position to assist this Court in its search for "truth". Hence, the applicant is a proper party; it deserves to be impleaded as party respondent.

13. For the reasons stated above, the application for impleadment as party respondent is, hereby, allowed. It is directed that the applicant be impleaded as party respondent No. 5. The petitioner is directed to file amended cause title within a period of one week.