

(2018) 12 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : OW 104, 151 No. 2016, IA No.01 Of 2016, 01 Of 2018

Suraj Parkash Khajuria @APPELLANT@Hash Omkar Nath Bhalla And Anr

Date of Decision : 14-12-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2018) 12 J&K CK 0039

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Rajinder Jamwal, B. S. Salathia, Parkhi Parihar

Final Decision : Dismissed

Judgement

1. Order passed by the learned Additional District Judge, Udhampur dated 21 st November, 2016 in an application filed by the respondent No. 2, namely, Sohan Singh S/o Avtar Singh under Order 1 Rule 10 CPC for being impleaded as defendant in the Suit filed by the petitioner/plaintiff against respondent No. 1, namely, Omkar Nath Bhalla, has been impugned by the petitioner/plaintiff.

2. Briefly the facts are that, the petitioner filed a suit for recovery of 1,74,18,990 (Rupees One crore, seventy four lacs, eighteen thousand, nine hundred and ninety only) against respondent no. 1/defendant. It was on the plea that the petitioner had executed certain works on behalf of the respondent/defendant in terms of an agreement executed between the parties on 23.11.2015. The payment having not been made, suit for recovery along with interest and damages was filed. After notice was issued in the suit, application was filed by Sohan Singh/respondent no. 2 herein under Order 1 Rule 10 CPC, seeking his impleadment as defendant no. 2 in the suit. To the application filed by him, respondent No. 1/defendant did not have any objection, however, the plaintiff raised the objection, claiming that he being dominus litis and the applicant not being a necessary or proper party should not be permitted to be impleaded as defendant in the suit. However, after considering the submissions made by the learned counsel for the parties, the trial court accepted the application and directed that applicant, Sohan Singh, be impleaded as defendant no. 2 in the

Suit. The aforesaid order has been impugned by filing the present petition by the petitioner/plaintiff.

3. Learned counsel for the petitioner submitted that suit was filed by the plaintiff against defendant/respondent no. 1 herein for non-payment of the amount for the work executed by him. The work was executed and the payment was to be made in terms of an agreement signed between the parties on 23.11.2015. In the suit filed, there is no relief claimed by the petitioner against Sohan Singh. He is the creation of the defendant-Omkar Nath Bhalla to defeat just claim of the plaintiff in the suit. Even the pleadings in the application do not make out a case for impleadment as a defendant in the suit. He is trying to raise an issue that in terms of an agreement signed between Sohan Singh and the present petitioner/plaintiff on 27.01.2016, certain works agreed to be performed by the petitioner were assigned by him to Sohan Singh and in terms thereof, the payments are due to him. The payment has not been made. The suit had been filed by the petitioner/plaintiff against the defendant/respondent no. 1 herein just to defeat his rightful claim. Against execution of work of ₹ 75.5 lacs, he had been paid ₹ 8.00 Lacs only. It was further submitted that the agreement sought to be produced by Sohan Singh/respondent no. 2 herein is a forged document, as the petitioner/plaintiff never signed the same. In any case, his claim is against the petitioner/plaintiff for recovery of amount for the work allegedly executed by him, he has an independent cause of action to file the suit. He cannot be permitted to be impleaded as the defendant in the suit filed by the plaintiff/petitioner against respondent no. 1/defendant, namely Omkar Nath Bhalla for recovery of the amount for the work executed by him. The plaintiff will prove his case to claim relief against the defendant already impleaded. He has not claimed and is seeking to claim any relief against Sohan Singh. Hence, he cannot be treated as necessary or proper party in the present proceedings.

4. In support of his arguments, reliance was placed upon the judgment of Hon'ble Supreme Court rendered in *Kasturi Vs. Iyyamperumal and others*: AIR 2005 SC 2813 as well as on the judgments of this Court in "*Rafiq and ors. Vs. Habibullah Bhat and ors*: AIR 2007 J&K 48, *Ved Paul Gandotra Vs. Pran Nath and others*: (2007) 2 JKJ 15, and *Manmohan Singh Gauri Vs. Punjab and Sindh Bank Ltd*: (2002) KLJ 333.

5. He further submitted that before the Court below, Mr. B.S. Salathia, learned senior counsel had appeared for the defendant, i.e., Omkar Nath Bhalla, however, before this Court, he is appearing for respondent no. 2, namely, Sohan Singh, who has been ordered to be impleaded as defendant no. 2 in the suit. That shows the connivance between the parties.

6. In response, Mr. Salathia, learned senior counsel submitted that he is appearing for respondent no. 1 in the present petition and not for respondent no. 2 and is defending the order, as it goes to his benefit.

7. As far as merits of the controversy is concerned, Mr. Salathia, learned senior

counsel submitted that the settled principle for impleadment of any person as party to a litigation is that he should either be a necessary or a proper party. A perusal of the order passed by the trial court shows that the applicant/respondent no. 2 was treated as a proper party, as he has relation with the lis pending in court. In fact, petitioner did not have the requisite infrastructure to execute the work allotted to him by the respondent no. 1. It was for that reason that he entered into an agreement with Sohan Singh, appointing him contractor.

Substantial amount due to him on account of execution of the work has not been paid.

8. He further submitted that in case any decree is passed in favour of the plaintiff and the defendant impleaded in the suit, interest of the applicant, who has been permitted to be impleaded as defendant no. 2 in the suit would be adversely affected and the amount, in fact, is payable to him and not to the plaintiff.

9. Heard learned counsel for the parties and perused the paper book.

10. Before proceeding further to notice the arguments of Mr. Salathia, learned senior counsel, on merits of the petition, to put the records straight regarding his appearance for the respondents, it needs to be added that on 16th December, 2016, this Court passed the following order;

" None for the petitioner.

Ms. Meenakshi Salathia, Advocate for respondent No. 2 on caveat.

None has appeared on behalf of petitioner when the matter is taken up for the second round.

In the interest of justice, awaiting appearance of the petitioner, list after two weeks."

11. As per the report of the Registry, the service of the respondents was complete. On 23rd February, 2018, this Court passed the following order:

"Learned senior counsel prays for short adjournment in order to enable him to place on record the agreement executed by him with plaintiff.

As prayed, let the matter be listed on 12.03.2018."

12. Subsequent thereto, an application bearing IA No. 01/2018 was filed by Ms. Meenakshi Salathia, Advocate to place on record the agreement executed between the petitioner/plaintiff and Sohan Singh on 27th January, 2016, representing the respondent no. 2 in the petition. The said application is accompanied by an affidavit of respondent no. 2. Under these circumstances to accept the plea raised by Mr. Salathia that he is appearing for respondent no. 1 only and not for respondent no. 2, is difficult, but still this Court is not finally opining on that issue, as nothing hinges on that. Be that as it may, even as per admitted facts, Mr. Salathia, learned senior counsel is appearing for respondent no. 1. Respondent no. 2 is un-represented despite service and knowledge of the

pendency of the proceedings, which is evident from the application filed by him, supported by his affidavit to place on record the agreement signed by him with the petitioner.

13. As far as issue on merits is concerned, in my opinion, the order passed by the learned court below is erroneous in law. Settled principles regarding impleadment of party in a suit have not been considered. The learned court below has failed to appreciate the basic principle that the plaintiff is dominus litus. He cannot be compelled to contest a suit against any party, against his wish. In case, litigant cannot be granted effective relief on account of non-impleadment of proper or necessary party, ultimately he may fail in the litigation. The settled principle is that impleadment of the person as a party is necessary for disposal of the case; without whose presence the court will not be able to determine the issues involved in the suit effectively and completely. The aforesaid parameters are missing in the case in hand.

14. The case set up by the plaintiff in the suit filed is that he had entered into an agreement with the defendant in the suit for execution of works contract. The job having already been executed and the payment not made, suit for recovery was filed. The only claim of the plaintiff in the suit is recovery of the amount due from the defendant already impleaded in the suit, namely, Omkar Nath Bhalla. There is no other dispute raised by him. After service of notice, Sohan Singh filed application for being impleaded as defendant in the suit claiming that the plaintiff in the suit did not have requisite infrastructure to execute the work contract, hence, had engaged his services for the purpose, and the works having been executed by him, he has not been paid any amount, hence, he is a necessary party. The claim made by Sohan Singh was not disputed by defendant already impleaded in the suit, namely, Omkar Nath Bhalla. It is only the plaintiff who contested the application and rightly so. Even if the claim set up by Sohan Singh is considered on its face value, the same can at the most be a claim by him against the plaintiff in the suit for recovery of money on account of certain works executed on his behalf. This is a totally independent claim having no relation with the prayer made by the plaintiff in the suit filed. Nothing has come on record to suggest that before filing of suit by the plaintiff against Omkar Nath Bhalla, Sohan Singh, who sought himself to be impleaded in the suit, took any steps to recover the amount, which according to him is due from Suraj Parkash Khajuria. It is for the first time when Suraj Parkash Khajuria filed the suit, application for impleadment was filed after the defendant in the suit was served.

15. The issues sought to be raised by Sohan Singh are not such, without adjudication of which, the claim of the plaintiff made in the suit cannot be decided. The defendant already impleaded in the suit can very well raise, whatever pleas are available to him in law, in his defence and lead evidence accordingly. Hence, I do not find that Sohan Singh can be a necessary or proper party to be impleaded in the suit filed by Suraj Parkash Khajuria against Omkar Nath Bhalla.

16. The issue regarding representation of Sohan Singh in the present petition, who is the real contesting party, has already been dealt with in the previous part of the judgment. Though initially the record suggested that caveat was filed on his behalf, however, later on the counsel claimed that he was appearing for Omkar Nath Bhalla, the defendant already impleaded in the suit. Meaning thereby, it is only the defendant already impleaded in the suit, who is now trying to defend an order passed in favour of Sohan Singh and not he who had filed application seeking his impleadment as defendant no. 2 in the suit. This court is not commenting in this aspect further, least the same may affect the case of either of the parties on merits.

17. For the reasons mentioned above, the present petition is allowed. The impugned order passed by the court below dated 21.11.2016 directing impleadment of Sohan Singh son of Kartar Singh as defendant no. 2, is set aside. The application filed for his impleadment as defendant no. 2 in the suit is dismissed.