

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Friday the 28th day of June 2024

I.A.No.2/2022

in

O.S.No.206/2021

1. M/s.Sri Sangeetha Mills,

Rep by its managing partner R.Kanagaraj

2. R.Kanagaraj

... Petitioners/ Plaintiffs

/VS/

1. M/s.Annapurna Cotex Pvt.Ltd

2. M/s.Annapurna Cotton Impex

3. M/s.Aster Apparels

4. M/s.Bhagyalakshmi Cotton Industries

5. M/s. Girija Cotton Mill

6. M/s.Hambicotspin

7. M/s.Laxmi Cotton

8. M/s.Mahesh Traders

9. M/s.Mahodayaakapaas

10. M/s.Maruti Oil Mills

11. M/s.Sai Pavan Cotton Traders

12. M/s.Sandeep Cotton Ginning & Pressing Factory

13. M/s.Sankar Cotton Company

14. M/s.Seetharaman Cotton Industries

15. M/s.S.Easwarappa & Co

16. M/s.ShaChunilal Prakash Kumar & Co

17. M/s.Shakthi Murugan Industries

18. M/s.Sree Mala Mallaeswara Cotton Traders

19. M/s.Sree Vashundhara Cottex
20. M/s.Sri Mookambika Cotton Ginning & Pressing Mill
21. M/s.SriSalasar Balaji Cotton Industries
22. M/s.Surya Industries
23. M/s.Arihant Associates
24. M/s.SushilMalapchad
25. M/s.Pavan Enterprises
26. M/s.Shri Ram City Union Finance Loan
27. M/s.Aditya Birla Finance Capital New Loan
28. M/s.Ambit Finvest Ltd
29. M/s.Capital Float Financial Service Private Ltd
30. M/s.IIFL Finance Limited
31. M/s.Poonawalla Fincorp Ltd., Formerly
known as Magma Fincorp Ltd.,

...Respondents/Defendants

32. M/s.Chennai Trade Link
33. M/s.Ra.Ra.Air Systems
34. M/s.Soundaram Chit Funds
35. M/s.Balamurugan Ginning Factory
36. M/s.Samunnati Agro Solutions Pvt Ltd-k

...Respondents/Proposed Parties

This petition is coming on 05.06.2024 for final hearing before me in the presence of Thiru.G.Mathanaseelan, Advocate for the Petitioners/ Plaintiffs and Thiru.M.Saravanakumar, Advocate for the 35th Respondent and Mrs.V.Malathy, Advocate for 36th Respondent and Thiru.K.Arun, Advocate for 33rd Respondent and upon hearing both side enquiry and perusing the records, and this court made the following:

ORDER

This petition filed Under Order 1 Rule 10 and section 151 of CPC to implead the proposed parties/ 32 to 36th respondents as 32 to 36 Defendants in the above suit.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The 2nd petitioner is the 2nd plaintiff in the suit. The 2nd petitioner have filed the above suit for the relief of permanent injunction and for such other reliefs. The 2nd petitioner is the managing partners of the 1st petitioner mill.

1.2. The 1st to 31st respondents are the 1st to 31st defendants and the 32nd to 36th respondents are the proposed party to the case proceedings.

1.3. The respondents/ 1st to 25th defendants are cotton merchants from various places. The respondents/ 26th to 31st are the private financiers. The 2nd petitioner had purchased cotton from the said 1st to 25th defendants on various occasions, due to the defective cotton supplied by the defendants, hence, the 2nd petitioner was put in huge loss. Therefore the 2nd petitioner have been asked some concession with the defectives for the repayment of the amount. The cotton merchants 1st to 25th respondents agreed the same in the first, hence he started to pay the amount by cash through his local agents for the past 8 months.

1.4. The 1st to 25th respondents didn't given proper receipt for 2nd petitioner's repayment, hence in the month of July 2021, the 2nd petitioner asked for the proper outstanding details after deduction of installment with these respondents, hence the respondents demanded the entire outstanding amount along with huge interest in a barbarian manner. Before purchasing the cotton bales, the cotton merchants used to receive some blank cheques, stamp paper and pro-note for security purpose. During the course of business the respondents send poor quality cotton to 2nd petitioner, hence, the 2nd petitioner was put in to huge loss, to manage the loss the 2nd petitioner borrowed loan from the authorized private financial Institutions, they are the 26th to 31st respondents herein. The 2nd petitioner planned to pay the amount 40% cotton bale concession amount to the private finance institutions, but the 1st to 25th has been

doing lot of troubles to his business and pleasant stay at his home. The respondents demanded and threatened 2nd petitioner in various modes illegally with support of local rowdies for the recovery of the entire poor cotton amount along with huge interest. The 1st to 25th respondents has also insisted the remaining private financiers to receive entire loan amount all of sudden, so all the respondents clubbed together and claiming huge amount from 2nd petitioner in the barbarian manner.

1.5. Knowing 2nd petitioner's most horrible situation the respondents are claiming the whole amount for the quality less cotton with huge interest and also advised the private financiers to claim the entire amount with huge interest all of sudden. In the same way the respondents bankers are also threatened the plaintiff by showing his blank cheques and pro-notes which were given for security purpose. The 2nd petitioner have repaid the amount around 50%, to the 1st to 31st respondents but they are calculating more interest and demanded huge amount again and again. The respondents enter into his house situated in the petition mentioned property with some rowdy elements unlawfully and threatened him and create endanger to his life and family.

1.6. The respondents take law in their own hands and often they came to 2nd petitioner business place and house along with rowdy elements and indulged in troublesome activities in front of their neighbors and public. Hence, the 2nd petitioner filed the suit in OS.No.206/2021 before this court. During the pendency of the suit the proposed parties/respondents 32 to 36 are illegally came to the suit property through their agents, staffs demanded huge amount from plaintiff in barbarian manner, by the advice other respondent, so they are necessary party to the case proceedings. Hence, it is necessary to implead the proposed parties/ respondents 32 to 36 as necessary party to the suit.

2. The brief averments of Counter statement filed by the 36th respondent as follows:

2.1. The petition is false, frivolous not maintainable either in law or on facts of the case. The petitioners filed the above suit for permanent injunction against the defendants/respondents and filed this IA.No.2/2022 to implead 2nd petitioner's

company as 36th respondent/ defendants.

2.2. The 36th respondent's company refuses to accept the statements made in the affidavit filed the petitioners/plaintiffs. The petitioner company has procured cotton for Rs.499733.88 by getting Trade limit permission on for 50 Lakhs from respondent company as per the Trade Agreement letter Sam Agro/TF/5028/2020-21 dated 17.12.2020 through various documents including sourcing and Distribution Agreement.

2.3. The 36th respondent company has issued several notices after due date and request to clear the dues. But the petitioner company did not come forward to settle the dues.

2.4. In contrary, in violation of the contract the 1st petitioner/plaintiff company leased out by the 2nd petitioner/plaintiff to the 2nd petitioner's father – in – law one Mr.Rajendran, who is also presently running petitioner company in the name of RKR Textile. In this regard, on 07.02.2022 a Police complaint have been initiated by 36th respondent company before the City Crime Branch, Coimbatore against the criminal act of the petitioner as he has accepted 36th respondent company's claim and paid a sum of Rs.5,00,000/- as a part – payment and remaining is pending as due for their company.

2.5. Further in case of any dispute between the parties, the parties shall be bound by the agreement to proceed only through the Arbitration proceedings at Chennai only as per sourcing and Distribution agreement clause No.13.9 dated 18.12.2020.

2.6. As per the terms of the contract, the 36th respondent company had sent a notice on 20.05.2022 to recall the trade limit from the petitioner company and its partners on or before 30 days from the date of this notice and in case of non – repayment, Arbitration proceeding would be taken against the petitioner Company and its partners and Guarantors within the jurisdiction of Chennai. Therefore, the petitioner company rushed to this court and filed this application.

2.7. As stated above as far as the 36th respondent is concerned, the respondent

prays to dismiss the IA.No.2/2022 that the petitioner has resolved the dispute in accordance with the Arbitration and Conciliation Act 1996 only and the petitioner cannot file the petition within the jurisdiction of this court, and move on when the seat or Arbitration is fixed at Chennai.

2.8. The interim application lacks merits and liable to be dismissed at the outset when the maintainability of the petition itself is in question. Hence, the petition ought to be dismissed.

3. The brief averments of Counter statement filed by the 35th respondent as follows:

3.1. The petition is false, frivolous and not maintainable on law and facts of the case. The suit for permanent injunction except under due process of law itself is not maintainable before this court because as per section 41 of Specific Relief act says as follows:

An injunction cannot be granted

(a) To restrain any person from prosecuting a judicial proceedings pending at the institution of the suit in which the injunction is sought, unless such restrain is necessary to prevent a multiplicity of proceedings.

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought.

3.2. Hence, the suit is not maintainable before this law and it is not a civil remedy as narrated under section 9 of Civil Procedure Code as claiming by plaintiff.

3.3. Therefore this proposed defective is not necessary to this suit as proper party because plaint itself is not maintainable and the relief claiming in the plaint is against equitable law and natural justice too besides against the object of Civil Procedure code and Specific Relief Act.

3.4. The petitioner is liable to pay money to the respondent arosed out of trade transactions which cannot be defeated through this suit. The respondent may be permitted to file additional counter statement if the circumstances so warranted in future. Hence, the petition ought to be dismissed.

4. Point for consideration:-

Whether the petition under Order 1 Rule 10 of CPC to implead the proposed parties/ 32 to 36th respondents as 32 to 36 Defendants in the above suit is to be allowed?

5. Points:-

5.1. Heard both side, perused the records. This petitioner filed the main suit for relief of permanent injunction to restrained the creditors from disturbing the plaintiffs' peaceful stay and business except under due process of law. Further the petitioners/plaintiffs previously filed suit against 31 company members. Further now the petitioners/plaintiffs filed this present petition to add the proposed 32 to 36th respondents as party proceedings to this case and stating that they are also with rowdy elements demanding huge amount from the plaintiff. The petitioner/plaintiff stating, the action of proposed 32 to 36th defendants are continuous cause of action and filed this petition to implead themselves in this case.

5.2. Admittedly the 1st to 31st defendants and proposed defendants 32 to 36 are the company creditor who owned loan to the plaintiffs. If really the plaintiffs have taken action against the creditors he must approached arbitrator as per the terms of their agreement or the plaintiffs have to take steps before Debt recovery tribunal by filing any debtor Insolvency Petition. The plaintiff can't adding of parties in piece mail manner. The cause of action arose to add the proposed 32 to 36 defendants are not continuous cause of action, it is separate one. Hence, the proposed parties can't be treated as necessary parties. The plaintiff ought to have take separate steps against them under the procedure established by law.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 28th day of June 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.2/2022 in
O.S.No.206/2021
Dated : 28.06.2024
DMC, Sulur