

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR

PRESENT: Thiru.Swarnam J. Natarajan M.L.,
Principal District Judge, Tiruppur

Wednesday, the 29th day of November, 2023

Thiruvalluvarandu 2054, Sobakiruthu year, 13th day of Karthigai month

I.A.No. 01/2023
in
C.O.S.No.81/2022

- 1.Toonz Retail India Pvt Ltd,
Rep. By its Director Ankur Agarwal
2. Ankur Agarwal,
Director of Toonz Retail India Pvt Ltd.,
3. Sumeet Sood,
Director of Toonz Retail India Pvt Ltd.,
4. Redson Retail & Reality Pvt Ltd,
Rep. By its Directore Ankur Agarwal
5. Ankur Agarwal,
Director of Redson Retail & Reality Pvt Ltd
6. Nandkishore Agarwal,
Director of Redson Retail & Reality Pvt Ltd

...Petitioners 1 to 6/Defendants 1 to 6

..Vs ..

1. Sri Vishnu Prasad, Prop of SAA Apparels
2. Quality Kidz Zone Pvt Ltd,
Rep.by its Director Bhaskarrad Nadipally.
3. Bhaskarrao Nadipally,
Director of Quality Kidz Zone Pvt Ltd.

Dated : 09.11.2023

Principal District Court, Tiruppur

4. AnthamReddy Amithes,
Director of Quality Kidz Zone Pvt Ltd,.

...Respondents 1to 4/Plaintiffs/ Defendants 7,8,9

This petition is coming up today i.e., 29.11.2023 for final hearing before me in the presence of Thiru.C.Balasubramaniam, Advocate for the petitioner and of Thiru.S.Prasanna, Advocate for the 1st respondent and the respondents 2 to 3 called absent set exparte and upon perusing the petition, affidavit and having stood over for consideration till this day, this Court delivers the following:

ORDER

This is the petition filed by the defendants 1 to 6 as the petitioners 1 to 6 under Order 1, Rule X(ii) CPC., to delete the defendants 2,3,5 and 6 from the present suit as they are no more the directors of the company in charge of its day to day affairs and not liable for the suit claim.

2. The fact stated in the petition in brief is as follows:

The plaintiff has impleaded the defendants in the present suit and sort for the reliefs under the provisions of Commercial Court Act, 2015. The defendant 1 & 4 are the companies involved and doing business of retail business of kids apparels, having multi franchisees and company owned store situated in various parts of country and they have decided to transfer the business to some entity who can operate in a better way thereby BTS was signed between the parties on 31.01.2020 and the defendant No.7 through its MD took over the control of business operations from 01.02.2020. From that date onwards all existing assets

and liabilities of the quality has been solely managed by the defendant No.7 and all employees were working under the supervision and directions of defendant No.7.

Formal communication was sent through email to all including the plaintiff with respect to the sale of the business and thereafter the defendant approached the plaintiff for making payment of Rs.2,86,440/-, which had been acknowledged by the 7th defendant. The plaintiff had received the payment, the defendant Nos.2, 3, 5 and 6 were merely directors in defendant 1 and 4 company, have no active involvement whatsoever in the day to day affairs of the company and defendant No.3 resigned from its position from February 2022 and no more associated with the company. The directors are not personally liable and responsible for the acts and deeds of the company, since the company is a juristic person and separate legal entity. The directors cannot be made personally liable for the act of the company. Hence, the present application.

The respondent plaintiff filed counter denying the allegations made in the petition stating that only during trial the fact whether the defendants are participating in the day to day affairs with the company could be brought out. The defendant No.7 had already taken over the company and the petitioners are not liable is the stand taken by them. The BTS and BTA agreement dated 31.01.2020 and 05.06.2020 were known to the plaintiff only now and the veracity of the said agreement is not admitted by the plaintiff. The plaintiff carried out the business with defendants Nos.1 to 6 therefore they are proper and necessary parties to the suit liable to pay the suit claim. The defendant 7 to 9 also had disputed the said agreement therefore, the defendants are intend to defraud the legitimate claim made

by the plaintiff and the application is one another step in that direction. Therefore the defendants are proper and necessary parties to the suit for the claim made by the plaintiff and the present suit is not maintainable.

3. The point for determination:-

Whether the petition filed by the defendants seeking for deletion from the suit is maintainable for the grounds raised?

a) The learned counsel for the petitioner contended that the defendants had not played any role in the suit and they have already transferred their right to the 7th defendant who had business transactions with the plaintiff company. Therefore the defendants have been unnecessarily impleaded in the present suit which they have no role to play. Hence, the petitioners prays for allowing the petition.

b) On the other hand learned counsel for the defendant contended that only during full fledged trial the matter can be decided and at this stage only to delay the proceedings this application is filed. Hence, the respondent counsel prays for dismissal of the petition. To substantiate the said allegations the petitioner had not filed any documents before the court to prove that the entire companies business transactions have been transfer to the 7th defendant. The suit is laid based upon the business dealings and as per the account statements as on 27.03.2018 the balance due payable to the plaintiff is Rs.43,67,589/- and Rs.2,86,440 was received towards acknowledgment. There was plan of amalgamation with the defendants and the matter could be decided only during full fledged trial therefore, at the stage the plea taken by the petitioner is premature. Hence, the respondent counsel prays for dismissal of the petition.

4. I have given my anxious consideration to the submissions made by

both the parties. The suit was filed based on account and as on 2018 the amount due in the account statement his claimed towards the suit claim. There was acknowledgment of date in 2020 which the petitioner claims that it was by the 7th defendant with whom they have amalgamated and he agree to clear the debts and start new business. These facts could be decided only during full fledged trial and at this stage the application seeking for deletion of the defendant is not sustainable. The same would amount to prejudging the issue and the defendants 1 to 6 have jointly filed written statement, therefore only during full fledged trial the matter can be adjudged. Hence, the application is not maintainable and the same is liable to be dismissed. Hence, the point is answered accordingly.

In the result the petition is dismissed. No cost.

Dictated to the steno typist, typed by him with the help of voice recorder, corrected and pronounced by me in open court, this the 29th day of November, 2023.

Principal District Judge,
Tiruppur.

LIST OF WITNESSES AND DOCUMENTS
ON BOTH THE SIDES: .Nil.

P.D.J., Tiruppur.

Draft / Fair Order
I.A No.01/2023 in
COS.No.81/2022
Dt:29.11.2023
P. D. J. Court, Tiruppur.

Dated: 29.11.2023

Principal District Court, Tiruppur.

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