

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Money Suit 14 of 2019
Renumbered as MS (COM) 07 of 2019
CNR No. WBSP18-000028-2019

Order No. 77

Date: 06.03.2024

In the matter of:

Suit for recovery of money
and injunction valued at Rs.
1,08,30,783/- plus interest.

AND

In the matter of:

M/S. C.R.C. Exports Pvt. Ltd.

Vs.

M/S MGA Realtors Pvt. Ltd.
and 03 Ors.

Order

Today is fixed for passing order in respect of the application being I.A. No. 11 of 2024 and I.A. No. 12 of 2024.

Both sides file their respective haziras.

Now, the instant applications have been taken up for passing necessary order.

I.A. no. 11 of 2024 and I.A. no. 12 of 2024

1. Both the captioned applications have been filed by the defendant no. 3 namely Mohul Debnath herein.
2. The I.A. no. 11 of 2024 was filed by the said defendant no. 3 under Order 1 Rule X of the Code of Civil Procedure, 1908(CPC) for impleadment of the party to the instant suit. The plaintiff herein duly filed its written objection to that effect.
3. The contention of the defendant no. 3 in the instant application is as follows.
4. Since the defendant no. 1 i.e. M/S MGA Realtors Pvt. Ltd. is a party being a company registered under a company act all the directors of the company who were directors at the time the liability as specified in the instant suit had accrued may be impleaded as party defendants in the suit.

5. In the instant case, Syed Asgar Hossain who was a full-fledged director of the defendant no. 1 company, at the time of filing of the instant suit and also responsible for the construction of the building including the sanction process was in existence. However, the plaintiff had impleaded the company in the instant suit as defendant no. 1 but has failed to implead the director namely Syad Asgar Hossain as a defendant in the instant suit. Therefore, since Syad Asgar Hossain was a director at the relevant point of time, the defendant no. 3 in the instant application prayed for impleadment of him as a party in the instant proceedings for smooth adjudication of the instant suit.

6. The defendant no. 3 also pertinently mentioned that it has been obtained from the master date of ROC, Kolkata i.e. from the website of the MCA (Ministry of Corporate Affairs), Government of India and from the master data it is quite crystal clear that Syad Asgar Hosain was a director at the time of filing of the suit and also during the sanction and construction work of the project as alleged in the suit.

7. *Per contra*, plaintiff by filing the written objection has vehemently objected to the instant application as well as the averments as set forth therein.

8. The counter argument of the plaintiff is as follows.

9. The instant suit was filed for the purpose of recovery of money, from the defendant nos. 1, 2 and 3, which were paid to those defendants by the plaintiff, in excess of what was due and payable by the plaintiff in favour of those defendants. The defendant nos. 2 and 3 are the responsible directors and/or persons in control of the defendant no. 1, in whose account the plaintiff has made excess payment, and the plaintiff has filed this suit, inter alia, for the purpose of recovering such excess payment. Since the said defendant nos. 2 and 3 had induced the plaintiff to enter into an agreement with the plaintiff, the said two persons were added as party defendants in the present suit. The plaintiff never had any other transaction and/or communication with any other person involved with the defendant no. 1 and therefore, the plaintiff never had any cause of action, against any other person involved with the defendant no. 1. In the said application, the defendant no. 3 falsely asserted that one Syed Asgar Hossain, should be added as a party defendant in the present suit, due to the fact that the said Syed Asgar Hossain was also another director of the defendant no. 1, at the relevant point of time.

10. So as to buttress its submission, the plaintiff also pleaded that that the plaintiff has choice of adding parties to its suit in order to prove its own case,

and such choice of the plaintiff cannot be curtailed in any manner whatsoever. The plaintiff does not have any necessity to add Syed Asgar Hossain as a party defendant in the present suit. The plaintiff is also not aware of the identity of the said person. In any event, the plaintiff does not have any cause of action to add the said person in the suit as a party defendant, and therefore, the question of adding any further or other person as a party defendant in the present suit, does not and/or cannot arise. Most importantly, the defendant no. 3 can not have any say as to who should be added as a party defendant in the suit, let alone, having any suggestion for any addition of party or amendment of plaint. The provision, purportedly invoked by the defendant no. 3 does not apply in the instant case.

11. At the outset, it is required to be noted that the defendant no. 3 in the suit filed application under Order 1 Rule 10 CPC and prayed to implead said Syed Asgar Hossain as party defendants.

12. Order I Rule 10 of CPC runs as follows:

“Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just”.

13. Recently, in the case of ***Sudhamayee Pattnaik and Ors. vs. Bibhu Prasad Sahoo and Ors.*** arising out of Civil Appeal no. 6370 of 2022 the Hon'ble Supreme Court on 16.09.2022 held as *“As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs”.*

14. At the outset, it is required to be noted that the defendant no. 3 in the instant suit filed application under Order 1 Rule 10 of the CPC and prayed to implead one Syed Asgar Hossain a director of M/S MGA Realtors Pvt Ltd which has been vehemently opposed by the plaintiff. It has already been mentioned in the earlier paragraph that it has already been observed by the

Hon'ble Supreme Court that as per the settled position of law, the plaintiffs are the *dominus litis* which is Latin legal maxim that means 'Master of the suit'. The maxim refers to the principle that a party who initiates a legal action has control over the proceedings and has the right to make decisions about how the case is conducted. It is also settled proposition of law that unless the court *suo motu* directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 of the CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs.

15. So, considering all, the application under Order 1 Rule 10 of the CPC filed by the defendant no.3 which is I. A. No. 11 of 2024 is hereby rejected on contest and the same is thus accordingly disposed of.

16. On the another application being I.A. no. 12 of 2024, the defendant no. 3 stated that by an Order dated 03.01.2024 this Court directed the defendant no. 3 to submit account statement of defendant no. 1 company, which is maintained at IDBI Bank, Gariahat branch for the period of 28.10.2010 to 18.05.2016. In accordance with the said Order Ld. Advocate of the defendant no. 3 requested the said Bank to provide the abovementioned details. However, by an email the said IDBI Bank informed that it has constraints based on regulatory guidelines to provide bank statement of the defendant no. 1 with respect to account impugned to other third party.

17. Therefore, it is necessary for passing a direction by this Court upon the said IDBI Bank to submit the account statement of defendant no. 1 company for the period of 28.10.2010 to 18.05.2016 otherwise the defendant no. 3 is unable to produce the same before this Court. The plaintiff has raised no objection against the prayer made by the defendant no. 3 in the instant application

18. Considering the aforesaid facts and scenarios, the IDBI Bank represented through its Assistant General Manager, Gariahat Branch Kolkata to submit the account statement of M/S MGA Realtors Private Limited of the account number 086102000014766, maintained at IDBI Bank, Gariahat Branch for the period 28.10.2010 to 18.05.2016 before this Court on the date fixed. The instant application being no. I.A.No.12 of 2024 is thus accordingly disposed of.

Defendants are directed to serve the copy of this Order upon the Assistant General Manager of IDBI Bank, Gariahat Branch forthwith.

Fix 30.04.2024 at 10:30 a.m. for filing account statement of M/S MGA Realtors Private Limited of the account number 086102000014766, maintained at IDBI Bank, Gariahat Branch for the period 28.10.2010 to 18.05.2016 by the defendants.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram