

Manorma Sharma vs. Food Corporation of India

Civil Suit No. 80 of 2010

29.12.2022 Present: Mr. Kapil Dev Sood, Sr. Advocate with Mr.Het Ram Thakur, Advocate for the plaintiff.

Mr. Y.P. Sood, Advocate for defendants No. 1 and 2.

Mr. Rajender Thakur, Central Government Counsel, for defendant No.3.

OMP No. 735 of 2022

This application has been filed under Order 1 Rule 10 (2) of Code of Civil Procedure read with Section 151 CPC for deleting the name of defendant No.3 from array of parties. Defendant No.1 is Food Corporation of India which is an instrumentality of Central Government. Defendant No.2 is General Maager of Regional Office of defendant No.1 in Shimla. Defendant No.3 is Union of India sued through Secretary, Department of Food and Public Distribution. Defendants No.1 and 2 are represented by Mr.Y.P. Sood, Advocate whereas defendant No.3 is being represented by learned DSG/Central Government Counsel for Union of India. Civil Suit is pending adjudication since 2010 wherein evidence of parties has been almost concluded.

Non-applicant/plaintiff has objected the prayer made in application on the ground that defendants No. 1 and 2 are functionaries/instrumentalities of defendant No.3 as Food Corporation of India has been constituted by Union of India and therefore, defendant No.3 is a proper party to suit and at this belated stage i.e. after 12 years of filing of suit, the objection raised by applicants/defendants No.1 and 2 is not sustainable.

This application has been filed on behalf of defendants No. 1 and 2. Defendant No.3 has not objected at any point of time its impleadment as defendant No.3. Defendants No. 1 and 2, till the date of filing of this application, which has been filed on 1st October, 2022, have never raised the issue of mis-joinder nor have objected impleadment of defendant No.3 in the suit.

Though Order 1 Rule 10(2) CPC empowers the Court to strike out or add any party improperly joined in the suit, when it appears to Court to be just to strike out the name of such party. At the same time, Rule 13 of Order 1 of CPC provides that objections as to non-joinder or mis-joinder shall be taken by parties at the earliest possible opportunity and in all cases, where issues are settled at or before such settlement, unless the ground of objection had subsequently arisen and any such objection, not so taken, shall be deemed to have been waived.

It is also settled that plaintiff has dominus litis to choose the defendants/parties to the suit. No doubt, a wrongly added party, facing hardship or prejudice to its rights, has a right to pray for striking out of its name from lis, in case such party is not necessary for effective, proper and complete adjudication of lis.

In present case, Union of India never objected its impleadment. Defendants No. 1 and 2 have objected joining of defendant No.3 at belated stage. Rules 10A, 10(2) and Rule 13 of Order 1 of CPC are to be read together by giving harmonious construction. It

has not been pointed out by defendants No. 1 and 2 that how and in what manner, impleadment of Union of India as defendant No.3 is causing prejudice to applicants/defendants No. 1 and 2.

Taking into consideration, provisions of law as well as facts and circumstances of case, I find that at this stage, prayer made in application cannot be acceded to. Accordingly, application is dismissed.

OMP No. 436 of 2022

This application has been filed by plaintiff under Order 18 Rule 17 read with Section 151 of Code of Civil Procedure for leading additional evidence.

Defendants are opposing this application on the ground that earlier application OMP No. 148 of 2022 filed by plaintiff was dismissed on 12.5.2022 and now by filing this application, plaintiff is abusing the process of law only with intention of delay the decision of suit and this application has been filed with intention to fill-up the lacuna in evidence and by way of this application, plaintiff is trying to bring on record the evidence which is neither relevant nor essential for determination of real point of controversy involved in suit. Further that plaintiff had led evidence in rebuttal on 11.7.2022 pursuant to order dated 12.5.2022 and therefore, this application is not maintainable.

It has been contended on behalf of plaintiff that present application was filed for determining the controversy between the parties ascertaining the present market value of rent & evidence sought to be produced is necessary and present application was filed on 7th July, 2022, prior to the date fixed for recording evidence of plaintiff on

11.7.2022, and therefore, it cannot be said that application has been filed after leading the evidence by plaintiff. It has been further submitted that evidence proposed to be led by plaintiff was not in the knowledge of plaintiff and plaintiff has received information under Right to Information Act about licence/agreement dated 23.3.2018 executed between M/s Chhota Shimla Projects Private Limited through authorized representative Mr.Parmod Kumar Sood and Commissioner of Central Good and Services Tax Commissionerate, Shimla and another licence/agreement dated 1.4.2017 entered between Parmod Kumar and H.P. State Information Commission, Keonthal Commercial Complex, Khalini, Shimla and therefore, this information could not be produced or placed on record in evidence earlier when plaintiff had led evidence in first instance. It has been submitted that application has been filed before closing of evidence of plaintiff in rebuttal and therefore, this application deserves to be allowed by permitting the plaintiff to summon and examine the witnesses mentioned in this application.

It has been further submitted that proposed evidence was not subject matter of OMP No. 148 of 2022 wherein other witnesses pertaining to different documents were proposed to be examined and further in the said application, documents related to rent assessment pertaining to Food Corporation of India were sought to be summoned and produced whereas in present application the documents, which are different than to documents referred in application OMP No. 148 of 2022, which have come in knowledge of plaintiff under Right to Information Act, are proposed to be produced in evidence.

I have gone through pleadings of OMP No. 148 of 2022 and pleadings of present application including reply and rejoinder thereto.

Considering the entire facts and circumstances, I am of considered opinion that present application has been filed before closing of evidence of plaintiff and the same has been filed with respect to documents which were not in possession of plaintiff but came to knowledge of plaintiff after receiving information under Right to Information Act and evidence sought to be produced may be helpful in determining the issue in dispute and therefore, this application is allowed and evidence proposed to be led, referred in application, is permitted to be produced and proved in accordance with law.

Application is allowed and dispose of.

CS No. 80 of 2010

List before the Additional Registrar (Judicial) during next week for fixing the date for recording additional evidence of plaintiff in terms of order passed in OMP No. 436 of 2022.

December 29, 2022
(ms)

(Vivek Singh Thakur)
Judge