

Oriental Bank of Commerce Vs. Anchor Constructions Pvt. Ltd.

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Court : DRAT Madras

Decided On : Oct-25-2006

Reported in : II(2007)BC49

Judge : K Gnanaprakasam

Appellant : Oriental Bank of Commerce

Respondent : Anchor Constructions Pvt. Ltd.

Judgement :

1. These two miscellaneous appeals were directed as against the order dated 4th May, 2006 in I.A. No. 534 of 2005 in I.A. No. 701 of 2003 and in Original Application No. 321 of 2003, passed by the D.R.T. I at Chennai.

2. The respondent No. 1 in this appeal viz. Anchor Constructions Private Ltd., filed an application to implead itself as a respondent/defendant in I.A. 701 of 2003 in Original Application No.321 of 2003. Respondent No. 1 in the affidavit filed in support of the petition before the Tribunal, has stated that they have entered into an agreement of sale in 2003 itself with the respondent No. 2 by which they have agreed to clear the liabilities of the respondent No. 2 to the respondent No. 3 Bank and in turn, the property at Kelambakkam, belonging to the respondent No. 2 was agreed to be sold to the respondent No. 1. That in pursuance of the said agreement, they have been making payments to the respondent No. 3. When they approached the respondent No. 3 in July, 2005, for release of the documents, the respondent No. 3. informed that there is an order in I.A. No. 701 of 2003 dated 5th

December, 2003, directing the respondent No. 3 not to release the title deeds without the specific permission of the D.R.T. in case of any settlement that may be arrived at and, therefore, they are not in a position to release the document. That in the said circumstances, the respondent No. 1 filed those applications.

3. The appellant herein opposed the said application by filing counter affidavit wherein it is stated that the applicant Bank sanctioned facilities to the defendant No. 1 subsequent to the facilities granted to the defendant No. 10 and they approached the defendant No. 10 by letter dated 28th December, 1999, requesting them to issue No Objection Certificate for ceding pari passu first charge and the defendant No. 10 agreed to issue No Objection Certificate. The applicant Bank has a second charge in respect of the properties of the defendant No. 1 and they have also obtained an order on 5th December, 2003 directing the defendant No. 10 not to release the title deeds, if any, in case of settlement that arises between the defendants, without specific permission of D.R.T., subject to further order in the I.A. The respondent No. 1 is neither a necessary nor proper party to decide the issue between the appellant and the respondent No. 2 and, therefore, their petition is not maintainable. The appellant being dominus litus, they need not fight with the respondent No. 1, who is in no way connected with the litigation.

4. The respondent No. 3 viz. Bank of India, has filed its counter-affidavit stating that it has no objection to implead the respondent No. 1 in I.A. No. 701 of 2003. The respondent No. 3 further contended that the proposed petitioner without understanding the legality of the order passed by the Tribunal, made unwarranted remarks and they are not sustainable. The agreement was entered into between the proposed party and the respondent No. 2 when the litigation was pending with the Tribunal, and it is not valid.

5. The point that arises for consideration of this Tribunal is whether the respondent No. 1 is a necessary and proper party to I.A. No. 701 of 2003 and Original Application No. 321 of 2003, pending on the file of D.R.T. I at Chennai.

The appellant filed the Original Application against defendant Nos. 1 to 9 for recovery of certain amounts and for permanent injunction not to alienate or deal with the property and for other reliefs. The said Original Application was filed on

12th November, 2003. The respondent No. 1 claims to have entered into an agreement with the respondent No.2 on 19th August, 2002, to purchase the Original Application property and also parted with amounts. Though the respondent No. 1 states that they have entered into an agreement with the respondent No. 2 to purchase the lands in 2003, the same was not accepted by the respondent No. 2. But on the other hand, the appellant is able to point out in the letter dated 28th April, 2005 sent by the respondent No. 2 addressed to the respondent No. 3 wherein they have stated that, "You are aware that we have been negotiating with a party, who have also met you in this connection and have been paying the instalments regularly". The agreement alleged to have been entered into between the respondent Nos.

1 and 2 was not reflected in the said letter. In the letter of the respondent No. 1 dated 21st October, 2005, addressed to the respondent No. 2, it is stated, "This has reference to the discussions and understanding reached with you during the year 2003, wherein you had agreed to sell the Kelambakkam property to our company provided we are in a position to arrange funds either from our own sources or from other parties." In the said letter also, the date of the agreement was not mentioned. Relying upon these letters, the learned Advocate for the appellant has pointed out that the so-called agreement relied upon by the respondent No. 1 is a created one as it is slated that the sale agreement was reached in 2003, but the sale agreement is dated 19th August, 2002. It was further submitted that it will not confer any right upon the respondent No. 1, as the same was entered into while the proceedings taken by the appellant against the respondent Nos. 2 and 3 were pending. It is further submitted that the appellant being domimis litus, no relief has been sought against the respondent No. 1 and they are neither necessary party nor proper party and, therefore, they cannot be impleaded in the I.A. and also in the Original Application.

6. On the contrary, the learned Advocate for the respondent No.1/proposed party has submitted that they have entered into an agreement with the respondent No. 2 on 5th December, 2003 and by virtue of the said agreement, they have also parted away with huge amount and the appellant has no right in the subject property and the Original Application itself is not maintainable and in any event, as the

respondent No. 1 is having some interest in the Original Application proceedings, it has got to be decided in its presence and thereby argued in support of the order passed by the D.R.T.7. The learned Advocate for the respondent No. 2 has submitted that the claim of the appellant against the respondent Nos. 2 and 3 is not maintainable and the order obtained by the appellant in the I.A. is also not maintainable. It is submitted that the order impleading the respondent No. 1 as a party to the proceedings will in no way affect the case of the appellant.

8. The respondent No. 3 has no objection to implead the respondent No.1 as a party.

9. The appellant filed the Original Application against the respondent Nos. 2 and 3 and others seeking several reliefs, and secured an order in I.A. No. 701 of 2003 dated 5th December, 2003, whereby defendant No.10 i.e. the respondent No. 3 in this appeal was directed not to release the title deeds, if any, in case of settlement between the defendants without specific permission of the D.R.T. subject to further order in the I.A. The said order has been allowed to be in force till today.

Neither the respondent No. 2 nor the respondent No. 3 had chosen to vacate the said order.

As it has been rightly pointed out that the respondent No. 1, who is a 3rd party, has not made out a case that he is a necessary and proper party to be impleaded in the Original Application and also in the I.A. A person may be impleaded as a party to a suit only when he ought to have been joined and he has not so joined i.e. when he is a necessary party or when without his presence the question in the suit cannot be completely and properly decided. That is to say, a party can be impleaded only when there is a cause of action against him and whether his presence is necessary and proper for effective adjudication of the dispute involved in the suit. That in the absence of the same, impleadment of a 3rd party cannot be countenanced. The impleading of 3rd party is being opposed by the appellant herein, who being the dominus litus, and in the said circumstance, the Hon'ble Supreme Court in the case of Anokhe Lal v. Radhamohan Bansal , has ruled that, "The Court should have been very circumspect in dealing with the application of a third party seeking to become party in the suit, when the plaintiff, who is the

dominus Vitus of the suit, is opposed to it." The appellant also relied upon the case of S. Ramaswamy v. State of Tamil Nadu, rep. by its Collector, Kanyakumari District at Nagercoil, wherein the learned Judge relied upon the earlier decision in the case of Ram Bilash Pandey v. Jai Narayan Gupta AIR 1984 Pat. 218, wherein it was held, "It is for the plaintiff to decide the forum where the suit is to be instituted as a party and his choice as to the place of institution of the suit or the parties to it can only be altered or interfered with by the Court under powers given to it by the statute and that a party to a suit cannot be thrust on an unwilling plaintiff, unless or otherwise provided by law." It is for the plaintiff to implead a party as it deems fit and proper unless the party who seeks to implead himself makes out a case that he is a necessary and proper party and in his absence, the Court will not be able to adjudicate the lis properly.

10. In our case, the respondent No. 1 claims that he is an agreement holder to purchase the subject-matter of the property and the said agreement is being challenged by the appellant herein and D.R.T. is not a forum to decide the inter se dispute between the appellant and the respondent No. 1 in respect of the sale agreement and it is for the respondent No. 1 to prove and establish the agreement, which is being relied upon by him. The limited question that arose in this appeal is, whether the respondent No. 1 has made out a case that he is a necessary and proper party to the Original Application. In my opinion, the respondent No. 1 has not made out a case that by non-impleading of himself as a party to the suit, the Court will not be able to adjudicate the matter properly. It is also to be noted that no cause of action has arisen as against the respondent No. 1 and the appellant also has not sought any relief against the respondent No. 1 and in the said circumstances, it is not possible for me to hold that the respondent No. 1 is a necessary and proper party to be impleaded either in the I.A. proceedings or in the Original Application proceedings. The respondent No. 1's remedy is elsewhere. Even with regard to the maintainability of the Original Application as contended by the respondents Nos. 2 and 3, it is for them to agitate the same before the D.R.T. and their interest would be considered even in the absence of the respondent No. 1. That in the said view of the matter also, I am of the view that the respondent No. 1 has not made out a case that he is a necessary and proper party for proper adjudication of the I.As. and Original Application and,

therefore, the order passed by the D.R.T., is liable to be set aside and accordingly it is set aside.

11. In the result, the appeal is allowed and the order dated 4th May, 2006, passed by the D.R.T. I, Chennai, is set aside.

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