

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**Roy and Chatterjee (Private) Ltd. Vs. ScIndia Steam Navigation Co. Ltd. and anr.**

**Roy and Chatterjee (Private) Ltd. Vs. ScIndia Steam Navigation Co. Ltd. and anr.**

**SooperKanoon Citation : [sooperkanoon.com/797257](http://sooperkanoon.com/797257)**

**Court : Chennai**

**Decided On : Sep-22-1960**

**Reported in : AIR1961Mad367; (1961)2MLJ335**

**Judge : Srinivasan, J.**

**Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8A, Rules 1 and 2**

**Appeal No. : Civil Revn. Petn. No. 2151 of 1959**

**Appellant : Roy and Chatterjee (Private) Ltd.**

**Respondent : ScIndia Steam Navigation Co. Ltd. and anr.**

**Advocate for Def. : King and Patridge, ;P.S. Srisailam and ;N. Krishnamurthi, Adv.**

**Advocate for Pet/Ap. : V. Devarajan, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

**Srinivasan, J.**

1. This revision raises the question of the propriety of the dismissal of an application made under Order VIII-A C. P. C. The petitioner was the third defendant in a suit, O. S. No. 445 of 1953, on the file of the IV Assistant Judge, City Civil Court. The plaintiff was constituted the agent by the Mysore Iron and Steel Works, Bhadravati, (first defendant) for the purpose of collecting 250 tons of scrap iron at Vishakapatnam from the Scindia Steam Navigation Co., who originally figured as the second defendant in the suit.

The plaintiff was carrying on business at Madras. He, in his turn, made the third defendant, who was carrying on business at Vishakhapatnam, his agent for taking delivery of the scrap iron from the second defendant and forwarding it to the Mysore Iron and Steel Works at Bhadravati. The third defendant took delivery from the second defendant and passed a receipt for full delivery of the 250 tons. It was claimed by the plaintiff that the delivery was made not on weight basis but on measurement basis.

At Bhadravati a shortage of about 68 tons was found and the plaintiff had to refund a sum of over Rs. 4000, representing the value of the deficit quantity, to the first defendant, the Mysore Iron and Steel Works. He accordingly sued defendants 2 and 3 seeking to recover the amount from the one or the other. A question of jurisdiction was raised and it was found by the trial court that it had no jurisdiction in respect of the claim against both defendants 2 and 3.

A revision was taken to the High Court. The High Court agreed that the trial court had no jurisdiction in respect of the claim against the Scindia Steam Navigation Co., and gave a choice to the plaintiff to proceed only against the third defendant in the City Civil Court or to file a plaint against both the Scindia Steam Navigation Co., and the third defendant petitioner in the Vishakhapatnam court. The plaintiff represented the plaint in the City Civil Court confining his relief as against the third defendant only.

2. At this stage, the third defendant filed a third party application seeking to implead the second defendant as a third party on the ground that the third defendant is entitled to indemnity as against the Scindia Steam Navigation Co. The proposed third party, the Scindia Steam Navigation Co., opposed the petition

on the ground that the third defendant himself could not have any cause of action against the second defendant at Madras.

3. The learned Assistant Judge came to the conclusion that the objection raised by the Scindia Steam Navigation Co. was sound and that this party could not be impleaded. It is against this order that the present revision petition is directed.

4. The principal ground that has been raised is that the learned trial Judge has not followed the decision in Subulal Sahib v. Perianna Pillai, 70 MLW 493 (2) : (AIR 1957 Mad 679). In this case, the question that was considered was whether in support of an application to implead a third party, privity of contract between the applicant and the third party was essential. It was held that it was not. The learned Chief Justice observed;

'Generally speaking, there will not be such a privity in a claim falling under Order VIII-A which the defendants set up against a third party. If there was direct privity, then the third party would have been necessary....'

I cannot see how this decision has been misapplied by the learned Assistant Judge. In paragraph 4, the trial court observed:

'It is true that it is not necessary that for an application to implead a person as third party under Order VIII-A Rule 1 C. P. C. there should be privity of contract between the plaintiff and a third party. So, the fact that the plaintiff has been found to have no jurisdiction to entertain this suit against the second defendant in this court will not stand in the way of the 3rd defendant having the 2nd defendant impleaded in this suit as a third party provided the 3rd defendant is able to establish a cause of action against the 2nd defendant Within the jurisdiction of this court.....'

5. Then the trial Judge proceeded to hold that in order to bring a third party on record, the defendant seeking to do so should establish that the claim as between them was Capable of adjudication by the court and was within the jurisdiction of that court. It seems to me that this is the correct approach to the question. Rule 2 of Order VIII-A states :-

'The third party shall, as from the time of the service upon him of the notice, be deemed to be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.'

This rule clearly enables the third party to raise all grounds to the action as would be available to him as against the party defendant who seeks to bring him on record; that is to say, if the petitioner who is the third defendant in the suit, sued the third party in a separate action, such third party would be entitled to raise the question of the jurisdiction of the court in defence. Such a defence would also be open to the third party in this application to implead him as a party. It is that aspect of the matter that the learned Assistant Judge has canvassed.

6. It was admitted that the proposed third party carries on business at Visakhapatnam. The petitioner, who is the third defendant, also carries on business at Visakhapatnam, and the contract as between them relating to the delivery of scrap iron was entered into at Visakhapatnam and was fulfilled at Visakhapatnam. If the plaintiff's action against [the proposed third defendant failed on the question of jurisdiction on the basis of the above facts (so it was found by the High Court in the C. R. P), the position is exactly similar in so far as the third defendant's petition to implead the second defendant as third party is concerned. It was open to the proposed third party to raise the question of jurisdiction, and the view taken by the learned Assistant Judge is to my mind correct.

7. The petition fails and is dismissed with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**