

(2015) 11 OHC CK 0018

Orissa High Court

Case No: C.M.P. Nos. 902, 903 and 904 of 2014

Jeevan Dhara Womens'
Community Trust (NGO) and
Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: Nov. 10, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2)

Citation: (2016) 121 CLT 231 : (2016) 1 OLR 203

Hon'ble Judges: Biswanath Rath, J.

Bench: Single Bench

Advocate: Prasanta Kr. Jena and N. Panda, Advocates, for the Appellant; Subrat Mishra, S. Mohapatra and B.N. Swarnakar, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Rath, J.

All the above three cases are taken up together for its involving a common question of law and as such decided together accordingly.

2. Short fact as reveals from the case record involving all the three cases is that the opposite party as plaintiff filed suit against the petitioners/defendants for recovery of money along with interest as appropriate as detailed in each of the plaint.

3. Common pleadings as available in all the three cases is that the plaintiff being a schedule bank is exempted from the operation of Orissa Money Lenders Act, 1975 vide Govt. of Orissa notification dated 15.07.1974 and as per Section 2(4) of Orissa Money Lenders Act, 1975 amendment vide Act 54 of 1975. The defendants being the Secretary and Director of Jeevandhara Women's Community Trust, Narla Road (in short, JWCT) approached the plaintiff bank for accommodation by way of loan facilities of as the borrower for lending to the members of certain numbers of Self

Help Group (in short, SHG) to which the plaintiff bank agreed and issued sanction letters to the borrower i.e. defendants. It is further pleaded that to secure the loan facilities, the defendants executed an agreement on behalf of JWCT, Narla Road in favour of the plaintiff bank on 16.09.2004 whereby the defendants agreed to repay the loan within three years with an interest @ 8.5% per annum subject to revision from time to time. It is alleged in the plaint that the in spite of clear agreement the defendants did not respond to the notice of the plaintiff-bank sent through Registered Post compelling to the plaintiff to file the suit for the reliefs as indicated hereinabove.

4. In response, the defendants filed a combined written statement denying the allegations made by the plaintiff claiming therein that the defendant promoted number of SHGs under the project sanctioned by NABARD and linkage with the plaintiff bank. The defendants submitted application as per the format supplied by the plaintiff to sanction loan in favour of SHGs. It is further contended by the defendants that the defendants taken a role of facilitator but not a borrower and the amount sanctioned by the plaintiff bank is transferred to the accounts of SHGs as per the detailed list given in the application and the defendants have not used a single pie towards its own use. It is on these premises, the defendants disputed the claim made by the plaintiff.

5. During pendency of the suit and after commencement of hearing, the defendants filed an application under Order 1, Rule 10(2) , CPC in all the three suits seeking therein for addition of SHGs (real borrowers) as parties in the respective suits for proper adjudication of the matter. Plaintiff filed objection in each of the suits seriously disputing such prayer of the defendants and contended that the suit can still be decided in absence of such parties. Further they have absolutely no link with the concerned SHGs and the relationship between the defendant and Self Help Groups is of their own and has nothing to do with the plaintiff or in the transaction taken place in between the plaintiff and the defendants. Considering the pleadings and rival contentions of the parties, the trial Court rejected the application holding that the SHGs has no direct involvement of availing the loan and execution of the agreement with the plaintiff-bank and as such their presence is not necessary. Again the suit can still be effectively and completely adjudicated even in absence of the party sought to be added. While assailing the aforesaid order, learned counsel for the petitioners bringing to the notice of the Court the provision under Order 1, Rule 10(2) of CPC, submitted that the defendants are also empowered to bring a party to the fold of defendant in a suit and it is the duty of the court to consider as to the necessity of addition of such a party keeping in mind the effective and complete adjudication of the dispute involved in the suit. Relying on a decision in between [Debendra Swain and Others Vs. State of Orissa and Others](#), Sri Jena contended that the rule empowers the Court to implead a person even if his presence is necessary for considering the case of the defendant or to adjudicate a dispute between the defendant and the person proposed to be impleaded as a party. It is on these

premises, the learned counsel for the petitioners contends that there is no legal consideration of the request of the defendants and therefore the impugned order ought to be set aside. On the other hand, the learned counsel for Opposite parties submits that the plaintiff is the dominus litis of a litigation. Looking to the pleadings made in the plaint and the prayer made therein, he has no claim against the parties sought to be added in the litigation. It is also further contended that in none of the transaction in between the plaintiff and the defendants, the parties sought to be added are involved contending that the suit can still be decreed in absence of such parties. Learned counsel for the Opp. party submits that there is no illegality in the impugned order leaving any scope for interfering in the same. Further relying on certain decisions as reported in [Kasturi Vs. Iyyamperumal and Others](#), submits that the position of addition of party on an application under Order 1, Rule 10(2) CPC at the instance of the defendant is almost settled and it has by now become consistent that there can be addition of parties to settle the dispute but the paramount consideration is as to whether there will be no effective and complete adjudication of the suit in absence of such parties. In the catena of decisions referred to herein above, the Courts time and again have settled this position in considering the application under Order 1 Rule 10(2) , CPC. the test as held is that there must be a right to some relief against such party in respect of the controversies involved in the proceeding and no effective decree can be passed in their absence. It is on these premises, learned counsel for opposite party submits that the application under Order 1 Rule 10(2) CPC has been rightly rejected by the trial court and there is no scope for interfering with the same.

6. Looking to the averments and pleadings made by the plaintiff in the plaint this Court finds that there is absolutely no link or reference in relation to the affairs in between the plaintiff as well as the party sought to be added to the civil proceeding. From the pleadings quoted hereinabove it is amply clear that the plaintiff has a definite and clear case against the defendants and from the pleadings as well as the evidence recorded so far, this Court is of the opinion that the suit still can be adjudicated upon on the basis of the pleadings and evidence already available on record. Further from the submissions made by the learned counsel for the respective parties as well as from the pleadings, this Court also finds that in no stretch of imagination, the plaintiff has any claim against the defendants through the parties sought to be added. Therefore, this Court is of the view that the plaintiff can not be forced to add a party against whom he has no relief or case even at all.

7. Now looking to the provision of law, no doubt the provision of law gives a power to the Court to consider an application under Order 1, Rule 10(2) , CPC at the instance of either parties to the suit but with a rider of paramount consideration of the court to find out as to whether the presence of such party is necessary in order to enable the court to adjudicate upon and settle all the questions involved in the suit effectively and completely.

8. It is under these circumstances, this Court finds the trial court while deciding the application under Order 1, Rule 10(2) , CPC has rightly understood the provision contains in Order 1, Rule 10(2) , CPC and has thus rightly arrived at a conclusion that neither the parties sought to be added is a necessary party to the proceeding nor there is any problem for deciding the suit effectually and completely and settle the questions involved in the suit in absence of the parties sought to be added.

9. Under the settled position of law, in a case in between [Kasturi Vs. Iyyamperumal and Others](#) , the Hon"ble Apex Court in deciding a case of this nature, has come to hold that the real test in deciding such matters are there, must be a right to some relief against such party in respect of the controversies involved in the proceeding and secondly no effective decree can be passed in absence of such parties. It is under the above settled principle of law, this Court is in full agreement with the findings arrived at by the trial court in rejecting the petition under Order 1, Rule 10(2) , CPC and the view of the trial court is well supported by the decisions of the Apex Court referred to herein supra. Similarly in another decision in a case of [Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others](#) , the Hon"ble Apex Court again deciding a case of this nature has come to hold that if ultimately the court finds that there is no need of joining a party for having effective and complete adjudication of the issues involved in the suit. Such parties are not necessary parties and the Court has no jurisdiction to implead such parties against the wishes of the plaintiff.

10. Considering the rival contentions of the parties and taking into consideration the observation of this Court made hereinabove as well as the decisions of the Hon"ble Apex Court, this court is of the view that the parties sought to be added was neither a necessary nor a proper party to the proceeding and in absence of whom there can be an effective and complete adjudication of the disputes involved in the suit and thus while declining to interfere in the impugned orders in all the three Civil Miscellaneous Petitions hereby confirm the same.

11. Under the facts and circumstances, all the three Civil Miscellaneous Petitions stand dismissed. However, there is no order as to cost.