

**(1985) 10 KL CK 0026**

**High Court Of Kerala**

**Case No:** C.R.P. No. 2533 of 1984

P.V. George

APPELLANT

Vs

M/s Bank, of Madurai Ltd.

RESPONDENT

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**Date of Decision:** Oct. 18, 1985

**Citation:** (1985) KLJ 999

**Hon'ble Judges:** M.M. Pareed Pillay, J

**Bench:** Single Bench

**Advocate:** S.A. Nagendran and K.B. Subahamani, for the Appellant; V.R. Venkitakrishnan, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

The revision petition is against the order of the Principal Sub Judge, Quilon in I.A. 2726/84 in O.S. 249/83. Revision petitioner is the 2nd defendant. 2nd defendant filed the application under. Order 1 Rule 10 (2) of the C.P.C. for impleading the Export Credit And Guarantee Corporation Ltd., Bombay (E.C.G.C. Ltd) as an additional defendant. The learned Sub Judge dismissed the petition holding that there is no necessity at all to implead the additional defendant. The revision petitioner filed written statement along with defendants 3 to 5. Issues were framed on 21-7-1984 and the case was posted for trial in the special list on 1-10-1984. In the meanwhile, revision petitioner filed A. 2726/84 to implead E.C.G.C. Ltd., Bombay as additional defendant.

2. Learned counsel for the revision petitioner contended that from the pleadings of the plaintiff as well as that of the defendants and the documents produced by the plaintiff it could be seen that E.C.G.C Ltd. has expressly guaranteed protection to the plaintiff Bank against losses due to the non-payment by exporters (defendants) on account of their default and that the E.C.G.C. Ltd. is bound to pay under the policy 3/4 of the loss in the case of post-shipment Export Credit Guarantee, Export Finance

Guarantee and Export Performance Guarantee and 2/3rd of the loss in others. According to the revision petitioner, substantial part of the amount claimed in the plaint ought to be paid by the Export Credit and Guarantee Corporation Ltd. and therefore the said Corporation is a necessary party in the suit. Counsel submitted that in the written statement the necessity to implead E.C.G.C. Ltd. has been clearly stated and therefore it cannot be said that the petition has been filed only to prolong the proceedings. Learned counsel for the plaintiff-respondent contended that the trial court's order does not call for any interference by this court as it is not fair or proper to compel the plaintiff who is the master of his case to implead third parties. Counsel submitted that if at all the revision petitioner is entitled to be compensated by E.C.G.C. Ltd. he should file proper suit against it and he should not unnecessarily complicate the issues involved in this suit between the plaintiff and defendants. Counsel for the respondent submitted that impleading E.C.G.C. Ltd. will not in any way be prejudicial to the plaintiff and at any rate to avoid multiplicity of proceedings the court below ought to have allowed the petition.

3. The plaint claim is for approximately Rs. 56,52,748.24 with further interest and costs. According to the plaintiff's counsel the plaintiff and the defendant firm with the partners contracted debtor creditor relationship wherein neither the E.C.G.C. Ltd. nor any other person or body corporate was a necessary and proper party. In para 5 of the written statement revision petitioner has admitted the debtor-creditor relationship with the plaintiff-Counsel for the plaintiff submitted that in view of the suit claim and also in view of the admission in the written statement that there is debtor-creditor relationship between the plaintiff and the defendant there is really no necessity to implead E.C.G.C. Ltd. Undoubtedly, plaintiff is the dominus-litis and only in exceptional circumstances a third party can be impleaded ignoring the objections of the plaintiff. That can be done only if the party sought to be impleaded has a direct interest, a legal interest and not a mere commercial interest. Merely because the packing credit guarantee insured is for the benefit of the bank, defendant's liability is not absolved.

4. Counsel for the revision petitioner submitted that in para 11 of the plaint it has been admitted that the packing credit limit sanctioned is against hypothecation of sea foods, against lodgment of letters of credit/confirmed order (covered under the whole turnover packing credit guarantee of E.C.G.C. Ltd. obtained by the plaintiff bank) and therefore the opposition to the petition is ill-conceived. But, it has to be noted that in para 13 of the plaint the case of the plaintiff is that the defendant firm's account with the plaintiff has become irregular and inoperative due to the default committed by the defendant firm and the plaintiff has been continuously demanding the defendant firm to settle the accounts by remitting the balance outstanding in the name of the defendant firm repayable to the plaintiff as per the books of accounts.

5. The question is whether there is any necessity to implead E.C.G.C. Ltd. as sought by the revision petitioner. As the plaintiff is the dominus-litis, in the normal course one cannot be impleaded as additional defendant if the plaintiff does not want it. In the counter filed to the application, the plaintiff's definite stand is that E.C.G.C. Ltd has no direct or legal interest in respect of the suit claim and hence the petition has to be rejected. A third party can be impleaded if it is found that such impleadment is necessary for the effective and complete adjudication and settlement of all questions involved in the suit. If it is found that adding of party is necessary, for the effective adjudication of the real controversy between the parties the court can definitely exercise the power under Order 1 Rule 10 (2) of the C.P.C. But, that can be done only in exceptional cases. In [Motiram Roshanlal Coal Co. \(P\) Ltd. Vs. District Committee and Others](#), it has been held as follows:

It is quite clear, therefore, that the court ought not to bring in any person as defendant against whom the plaintiff does not desire to proceed unless a very strong case is made out, showing that in the particular case justice cannot be done without his being brought in.

It is true that the court has discretion to implead a party even if it is opposed by the plaintiff in a case where it is found that justice cannot be done without he being in the party array. More over, the paramount consideration is that for the adjudication and settlement of all the questions involved in the suit it is necessary to add the party. As held in Sampo Frozen Foods v. Karnataka Bank Ltd (1983 KLT 447) "the party sought to be impleaded should have a direct interest, a legal interest and not a mere commercial interest." It has been held [In Re: Kelloth Ibrahim Haji and Others](#), that,

The court should consider mainly whether the presence of the proposed parties would be necessary for adjudicating upon the questions that are involved in the suit and an order for addition of parties should not be made merely with a view to avoid multiplicity of suits if otherwise their presence is not necessary for determining the real questions involved in the suit.

So long as it has not been established that impleading third party is necessary for the proper and effective adjudication of the issues involved in the suit and for completely settling the controversy between the parties, additional party cannot be impleaded without the consent of the plaintiff. Plaintiff Bank does not claim any relief against the person sought to be added as the additional defendant. Moreover, the additional defendant sought to be impleaded has no direct or legal interest in the subject matter of the suit. Impleadment of the Corporation cannot be justified even on the assumption that the Corporation has some commercial interest over the plaintiff claim. The learned Sub Judge has rightly dismissed the petition and I find no reasons to interfere with it.

In the result, the C.R.P. is dismissed with no order as to costs.