



2025:DHC:910



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 13.02.2025+ **CS(COMM) 940/2018****RELIGARE FINVEST LIMITED**

.....Plaintiff

Through: Mr. Sandeep Das, Ms. Kanak Malik and Mr. Tejasvi Mahajan, Advocates
Mr. Madhav Khosla and Ms. Moha Paranjpe, Advocates in IA 12197/2019

versus

LAKSHMI VILAS BANK LIMITED

.....Defendant

Through: Mr. Malak Bhatt, Ms. Sushmita Gandhi, Ms. Vatsala Pant and Ms. Samridhi, Advocates

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.****I.A. 12197/2019 (Impleadment)**

1. The present application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereafter 'CPC') has been filed on behalf of the applicant/ State Bank of India, seeking impleadment as proposed defendant in the present suit being CS (COMM) 940/2018.



FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that the Plaintiff had filed the present suit against the Defendant's action of liquidating Fixed Deposits (FDs) amounting to ₹791,44,77,051 along with interest, which were maintained by the Plaintiff with the Defendant, i.e. Lakshmi Vilas Bank Limited. The Applicants, comprising various banks and financial institutions, had sanctioned and disbursed multiple credit facilities, including term loans, working capital demand facilities, cash credit, and overdraft arrangements, under a Multiple Banking Arrangement to support the Plaintiff's lending activities. The instant application for impleadment has been filed by the authorized representative of the State Bank of India, who is fully competent and authorized by a letter dated 29.08.2019. Additionally, the State Bank of India had been authorized by 19 other lenders to sign, verify, and file the application for impleadment. The Applicants had sanctioned credit facilities totaling ₹11,020 crores as of 31st March 2019 to meet the Plaintiff's funding requirements. The terms and conditions set out in the sanction letters had been accepted by the Plaintiff, following which various loan and security documents had been executed in favor of the Applicants. To secure these facilities, the Plaintiff had created a floating first charge on a pari passu basis over its business receivables, book debts, and current assets, including cash and cash equivalents. For effective monitoring and security consolidation, a Security Trustee Agreement had been executed on 23.08.2013, appointing IL & FS Trust Company Limited (later Vistra ITCL) as the Security Trustee for the lenders. In



furtherance of the agreement, a Deed of Hypothecation had been executed on 23.08.2013, creating a charge over the Plaintiff's hypothecated assets. Over time, the Plaintiff had availed credit facilities that had been renewed and enhanced, leading to the execution of additional transaction documents, including a Supplemental Deed of Hypothecation dated 20.03.2019, securing enhanced facilities up to ₹15,000 crores. The FDs held by the Defendant had also formed part of the hypothecated assets, which had been secured in favor of the Applicants under the Deed of Hypothecation and Supplemental Deed of Hypothecation. However, in April 2018, the Applicants had been informed that the Defendant had liquidated the hypothecated FDs without authorization and adjusted the amounts towards loans availed by the Plaintiff's group companies. As per the applicant, this action was prejudicial to the interests of the Applicants, and in violation of the terms of the hypothecation agreement. Thus, applicant State Bank of India has preferred the present application seeking its impleadment as a defendant in the present petition.

SUBMISSION BEFORE THE COURT

3. The learned counsel appearing for the applicant submits that the applicant herein is a proper and necessary party. It is submitted that the real controversy/ dispute or the subject matter of the instant suit is the Fixed Deposits. Hence, it is stated that for the proper disposal of the instant suit in an effective manner, the applicant be added in the suit and be granted an opportunity to be heard as



necessary and proper party. The learned counsel appearing for the applicant further submits that the applicant is the necessary party to the present proceedings since any adjudication, and any decision thereafter, in the present matter shall have a direct bearing on the rights and obligations of the applicant. Therefore, it is prayed that the applicant be impleaded as defendant in the instant matter, for proper adjudication of the matter.

4. The learned counsel appearing on behalf of the applicant also contends that Order I Rule 8 of the CPC allows one person to sue or defend on behalf of all in same interest, therefore, the lenders/Banks having the same interest and being similarly affected by any or all orders flowing from this Court in the instant suit may be impleaded on the basis of the instant application.

5. The learned counsel appearing for the Plaintiff submits that he has no objection if the proposed defendants are impleaded in the instant suit.

6. *Per contra*, the learned counsel appearing for the defendant vehemently opposes the present application and submits that the applicant has no *locus-standi* to seek impleadment of the lenders/Bank constituting the Consortium. It is further submitted that the plaintiff had filed the instant suit and sought relief only against the defendant no. 1 and if the need be, any impleadment should come either from the side of plaintiff or from all the parties seeking impleadment. Therefore, it is submitted that the instant application is liable to be dismissed.



7. This Court has **heard** learned counsel appearing on behalf of the parties, and has perused the averments made in the captioned application.

ANALYSIS & FINDINGS

8. Before advertng to the merits of the application, it shall be essential to examine Order I Rule 10 of the CPC, which governs the impleadment of parties in a civil suit. The relevant provision is reproduced below:

“10. Suit in name of wrong plaintiff.—

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be



served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the Indian Limitation Act, 1877 (XV of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

9. Thus, Order I Rule 10 of the CPC empowers the Court to implead, substitute, or remove parties to a suit to ensure the effective and complete adjudication of the dispute. It provides that if a suit has been instituted in the name of an incorrect plaintiff due to a bona fide mistake, the Court may allow substitution or addition of the correct party. Additionally, the Court has the discretion to strike out any improperly joined party or add a necessary party, whether as a plaintiff or defendant, to enable a just and comprehensive resolution of the matter. If a new defendant is added, the plaint must be amended accordingly, and summons must be served on the new defendant and, if required, on the original defendant. Furthermore, proceedings against an added defendant shall be deemed to commence only upon service of summons, subject to the provisions of the Limitation Act.

10. The scope of Order I Rule 10 of CPC, concerning the addition and removal of parties, extends beyond the rights of a non-party seeking impleadment. It also encompasses the Court's judicial discretion to add or strike out a party at any stage of the proceedings to ensure the effective adjudication of the dispute. The same has been affirmed by the Hon'ble Supreme Court in *Mumbai International*



Airport Pvt. Ltd. v. Regency Convention Centre & Hotels & Ors.:

(2010) 7 SCC 417, relevant portion of which reads as under

“12. Let us consider the scope and ambit of Order I of Rule 10(2) of CPC, regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. vs Invest Import*, 1981 (1) SCC 80, reiterated the classic definition of ‘discretion’ by Lord Mansfield in *R. vs. Wilkes* - 1770 (98) ER 327, that ‘discretion’ when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, ‘but legal and regular’. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.



12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow



or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

11. Thus, the core issue before this Court is whether the impleadment of the applicant is essential for the effective adjudication of the present case.

12. In the present case, the Plaintiff had filed the present suit challenging the Defendant’s liquidation of Fixed Deposits worth ₹7914.47 crores. The Applicants, comprising various banks, had sanctioned ₹11,020 crores in credit facilities to the Plaintiff, secured by a floating first charge over its receivables and assets, including the FDs. A Security Trustee Agreement and Deed of Hypothecation had been executed, ensuring the lenders’ interests. However, in April 2018, the Defendant unilaterally liquidated the FDs without authorization, adjusting the amounts against loans of the Plaintiff’s group companies, violating the hypothecation terms and prejudicing the Applicants' rights.

13. The Applicants in the present dispute are secured creditors of the Plaintiff with a first charge over its receivables and assets, including the Fixed Deposits involved in the matter. Through the Security Trustee Agreement and the Deed of Hypothecation, the Plaintiff has expressly created a security interest in favor of the Applicants, designating them as the primary beneficiaries of the receivables and assets in case of any financial defaults.



14. The Applicants' role is further heightened by the Defendant's actions, wherein the Fixed Deposits were liquidated and the proceeds were adjusted without their consent, thereby potentially violating their secured rights. The Applicants seek to protect their legitimate security interests by ensuring that their prior charge is acknowledged and upheld, while also challenging the unauthorized acts of the Defendant. Their involvement in the case is critical to clarify the legality of the Defendant's actions and to safeguard the Applicants' rights as secured creditors, which are central to the resolution of the dispute.

15. The impleadment of the Applicants is thus essential for the proper adjudication of the present suit, as they are secured creditors of the Plaintiff and hold a first charge over its receivables and assets, including the Fixed Deposits in question. The Plaintiff had hypothecated its receivables in favor of the Security Trustee, acting on behalf of the Applicants, under the Security Trustee Agreement and the Deed of Hypothecation. The Defendant, without the consent of the Applicants and in violation of their security rights, had allegedly unilaterally liquidated the Fixed Deposits and adjusted the proceeds against its own claims. This action has directly impacted the Applicants' security interests, rendering their participation in the suit crucial to protect their rights. Furthermore, the resolution of the present dispute requires a determination of whether the Defendant's actions were lawful and whether the Applicants' prior charge over the receivables was infringed. The presence of the Applicants as parties will ensure that all necessary stakeholders are before the



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Court, thereby avoiding any conflicting decisions or multiplicity of proceedings. Their impleadment is, therefore, necessary for a complete and effective adjudication of the matter and to uphold the principles of justice and fairness.

16. Accordingly, the instant application seeking impleadment of the applicant as defendant in the present suit is allowed.

17. The plaintiff is also directed to file the amended Memo of Parties within two weeks from date, thereby impleading the aforesaid applicant as the defendant no. 2 to the captioned suit.

18. The present application stands allowed and is accordingly disposed of.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 13, 2025/A