IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for Leave to Appeal under and in terms of Article 128 of the Constitution read with Section 5 (2), 6 of the High Court of the Provinces (Special Provisions) Act No.10 of 1996 read with Chapter LVIII of the Civil Procedure Code seeking Leave to Appeal under and in terms of Section 754 (2) of the Civil Procedure Code

Sri Lanka National Cooperative
Council Limited
No.455, Cooperative House,
Galle Road, Colombo 03

Plaintiff

SC Appeal No.34/2017
SC/CHC/LA 61/2016
HC (Civil) No.110/2015/MR

Vs

1. Perera Ramanayake Don Vipula Perera
   No 60/34, Yadessa Cemetery Road,
   Siddamulla, Piliyandala

2. Radiant Trading Company (Private) Limited
   No 1 B, 1-1-10, 9th Lane
   Colombo 3

3. Radiant AC Cabs (Private) Limited
   No 1 B, 1-1-10, 9th Lane
   Colombo 03

4. Lakpathirana Ajith Rohana
   Kumara
   No.24/4, Gammana Road,
   Maharagama

5. Gurunnaselage Don Dulani
   Chandima Wijesinghe
   No.60/34, Yadessa Cemetery
   Road Siddamulla,Piliyandala

6. Ranwalage Sudath Priyantha
   No.195/32, Weliwita Road,
   Malabe
   Defendants

AND NOW BETWEEN

Sri Lanka National Cooperative
Council Limited
No.455, Cooperative House,
Galle Road, Colombo 03
Plaintiff-Petitioner-Appellant

Vs

1. Perera Ramanayake Don Vipula Perera
   No 60/34, Yadessa Cemetery Road,
   Siddamulla, Piliyandala

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5. Gurunnaselage Don Dulani Chandima Wijesinghe
   No.60/34, Yadessa Cemetery Road,
   Siddamulla, Piliyandala

6. Ranwalage Sudath Priyantha
   No.195/32, Weliwita Road,
   Malabe
   Defendant-Respondents

BEFORE: Buwaneka Aluwihare PC, J.

Preethi Padman Surasena J.

S. Thurairaja PC, J.

COUNSEL: J. M. Wijebandara with Miss Kalpani Pathirage and Sharin Sohani for the Plaintiff- Petitioner

Maura Gunawansha PC with Prasanna Panawenna and Miss Dilshani Gunaratne for the Defendant-Respondents

ARGUED ON: 19.06.2019

WRITTEN SUBMISSIONS: 12.09.2019

DECIDED ON: 30.06.2021

JUDGEMENT

Aluwihare PC J.,

(1) The Plaintiff-Petitioner-Appellant (hereinafter sometimes referred to as the 'Plaintiff') filed action before the Commercial High Court against the Defendant-Respondents (hereinafter sometimes referred to as the 'Defendants') seeking judgment against the Defendants jointly and/or severally to recover a sum of Rs. 48,031,992.92 due, under the agreements marked 'P2' to 'P5' together with legal interest.

(2) Upon entertaining the Plaint, the learned High Court Judge ordered summons be issued on the Defendants. Accordingly, the 1st to 6th Defendants appeared before the court and filed a joint proxy and the date for filing of answer was fixed for the 19th October 2015. The Defendants filed a motion ('X3') on 15th October 2015 and moved the court seeking an order to have the Defendants, save for the 2nd Defendant, discharged from the case as the parties to the agreements marked and produced along with the plaint, ['P2' to 'P5'], were only the Plaintiff and the 2nd Defendant.

(3) The learned High Court Judge by his order ('X6') discharged all the Defendants other than the 2nd, requiring only the 2nd Defendant to file answer.

(4) Aggrieved by this order, the Plaintiff moved this court by way of Leave to Appeal and Leave was granted on the questions of law referred to in sub-paragraphs (I), (II), (III), (IV) and (V) of paragraph 16 of the petition of the Appellant [Plaintiff].

(5) The questions of law in verbatim, are as follows;

I. Has the learned High Court Judge erred in law in ordering to discharge the 1st, 3rd, 4th, 5th and 6th Defendants acting under Section 22 of the Civil Procedure Code?

II. Are the 1st and 3rd Defendants necessary parties whose presence is necessary for full and effective adjudication of the cause of action alleged in the plaint?

III. Are the 4th to 6th Defendants necessary parties whose presence is necessary for full and effective adjudication of the cause of action alleged in the plaint?

IV. Were not there any tenable grounds before the learned High Court Judge to come to the conclusion that 1st, 3rd, and 4th to 6th defendants were not necessary parties to the cause of action alleged in the plaint, especially in the absence of any oral and/or documentary evidence?

V. Is the order of the learned High Court Judge contrary to Section 14 and 18 of the Civil Procedure Code?

Facts

(6) The Plaintiff is a Cooperative society registered in terms of the provisions of the Cooperative Societies Law No.5 of 1972 under the name "Sri Lanka National Cooperative Council Limited" [hereinafter also referred to as "the Cooperative Council]. The 1st Defendant, at all times material to this transaction, was representing the 2nd and 3rd Defendant companies, Radiant Trading Company (Pvt.) Ltd and Radiant AC Cabs (Pvt.) Ltd. Respectively. The 4th, 5th and 6th Defendants are the other Directors of the 2nd and 3rd Defendant companies.

(7) On or about the 20th July 2010, the Plaintiff entered into a verbal agreement with the 1st Defendant who was representing the 2nd and/or 3rd Defendant companies. Under this agreement, the Plaintiff was to import and handover stocks of cement to the Defendants and the Defendants were to sell the stocks of cement so handed over in the local market and were obliged to pay the Plaintiff the agreed price. [COOP Cement Project].

(8) This verbal agreement was further reaffirmed by the execution of Sales Agency agreements ('P2'- 'P5') during the period of 20th July 2010 to 30th September 2013. **On the face of these documents only the Plaintiff and the 2nd Defendant have been named as parties to the agreement.** It is to be noted that, although in two of the four agreements, the 2nd

Defendant company has been named as the second party to the agreement, the seal of the 3rd Defendant company has been placed on the contract instrument. The 4th to the 6th Defendants have signed one or more of those agreements as witnesses, in their capacity as the directors of the 2nd and or 3rd Defendant companies.

(9) The Plaintiff's case is that, based on the terms and conditions of the agreements, the Plaintiff imported consignments of cement which were "delivered to the 1st Defendant and/or 2nd Defendant and/or 3rd Defendant". The Plaintiff claims that the "1st Defendant and/or 2nd Defendant and/or 3rd Defendant" are legally liable to pay a balance of Rs. 48,301,992.92 to the Plaintiff as sales proceeds of the aforementioned quantity of cement.

(10) In paragraph 15 of the plaint, the Plaintiff has averred that the Defendants have settled Rs.293 million [approximately] out of Rs.342 million [approximately] due to the Plaintiff. The Head of Finance of the 2nd Defendant company by his letter dated 13-05-2013 [P6] has only disputed the amount outstanding.

(11) The Plaintiff states that upon the Defendants jointly and/or severally defaulting the payment, Letters of Demand were served on all 6 Defendants on 12th December 2014 ('P9'- 'P14'). The Defendants had sent a joint reply ('P15') admitting the delivery and acceptance of the quantity of cement, however, disputing the amount payable. The Directors have further stated that the Plaintiff had entered into the agreements marked 'P2', to 'P5', only with the 2nd Defendant Company.

(12) According to the Plaintiff, it was the 1st Defendant who made representations and thereby made the Plaintiff believe that he was acting on behalf of the 2nd and 3rd Defendant companies and that it was the 1st Defendant who entered into the agreements with the Plaintiff and took part in the entire process related to the 'Coop Cement Project'.

(13) The Plaintiff further states that the Plaintiff relying on the representation made by the 1st Defendant as the 'sole owner' of the 2nd and 3rd Defendant companies, the Plaintiff entered into the agreements referred to.

(14) The Plaintiff contends that, apart from the 1st Defendant, the 4th to 6th Defendants were directors of the company, who had a direct link to the actions of the 2nd and 3rd Defendant companies. Therefore, the objective of naming all 6 Defendants in the Plaint is to claim liability jointly and/or severally. The Plaintiff asserts that, in that context, the presence of all defendants is necessary for an effectual, full and final disposal of the action.

The Contention of the Appellant

(15) One of the main arguments on behalf of the Plaintiff- Appellant was that the order of the learned High Court Judge', based on Section 22 of the Civil Procedure Code [hereinafter referred to as the CPC], discharging parties [defendants] was blatantly erroneous and contrary to law.

(16) It was further contended on behalf of the Plaintiff, that there was no legal basis to discharge the defendants from a case, solely on the basis of a Motion, without it being supported by an affidavit, particularly in an instance where summons had been served. It was further argued that such an order [of discharge] can only be made upon the defendants satisfying court and the Defendants have failed to adduce any material to substantiate their application to have some of them discharged. It was also contended that the issue as to whether the plaintiff has a cause of action against the Defendant ***can be decided, only after the pleading are completed and not before*** and to that extent the learned High Court Judge erred in making the order of discharge.

(17) Another point of contention was that the learned High Court Judge had failed to appreciate the fact that the Plaintiff had a "valid cause of action" jointly and or severally against all Defendants and by holding that some of the Defendants were not necessary parties, had offended Section 14 of the CPC.

(18) It was the contention of the learned counsel for the Plaintiff that a motion filed, in terms of section 22 of the CPC *"can only lead to a direction under and in terms of Sections 36 and 37 of the CPC, but not for dismissal of the Plaint and/or discharge of the defendants".* It was further contended that the order of discharge of the Defendants, amounts to a dismissal of the Plaint in respect of those Defendants that were discharged.

(19) It is to be noted that the learned High Court Judge acted on the motion [X3] dated 15th October 2015 filed by the Defendants, by which the Defendants have moved the court for an order of discharge in favour of all Defendants save for the 2nd Defendant, in terms of Sections 18 and 46 (2) of the CPC. Nowhere in the motion the Defendants have referred to Section 22 of the CPC.

(20) It was also urged on behalf of the Plaintiff; "*that any plaintiff has a right to join as defendants, against whom the right to any relief is alleged to exist. Therefore, what is required by pleadings of a Plaint is some kind of allegation against the Defendants, for them to be necessary parties"* and that the learned High Court Judge had *"attempted to try and adjudicate the allegations without even waiting till the filing of the answer".*

The Legal Position

(21) It is clear from the Plaint, that the relief the Plaintiff had sought is a judgement in their favour to recover sums of money due to them in

terms of the "Sales Agency agreements" entered between the parties, [P2 to P5]. All those agreements are between the Plaintiff, Sri Lanka Cooperative Council Ltd (the first Party) and the 2nd Defendant, Radiant Trading Company (PVT) Ltd. (The second party).

(22) The Chairman and the General Secretary had signed **[as witnesses]** on behalf of the first Party the Cooperative Council whilst two directors [1st and 4th Defendants] of Radiant Trading had signed on behalf of the second party as **witnesses.**

(23) There are 22 terms and conditions stipulated under the impugned agreements and all those conditions refer to the 1st and 2nd parties to the agreements and no other.

The Questions of Law

(24) The first question on which Leave to Appeal was granted is as to whether the High Court Judge had **"erred in law in ordering to discharge 1st, 3rd, 4th, 5th and 6th Defendants acting under Section 22 of the Civil Procedure Code?"**

It must be said that the learned High Court Judge had made order striking off all the Defendants save for the 2nd Defendant in terms of Section 20 read with Section 18 of the CPC and not in terms of Section 22 of the CPC. [Page 11 of the impugned order]

The relevant portion of the order is reproduced below;

"… it is hereby ordered to strike out the names of the 1st, 3rd to 6th defendants from the proceedings in terms of Section 20 read with Section 18 of the Civil Procedure Code."

The learned High Court judge had made reference to Section 22 of the CPC to point out the requirement, that any objection with regard to *'joinder of parties who have no interest in the action'* must be taken *'at the earliest possible opportunity'* [under that section]. The learned High

Court Judge had also relied on the decision in the case of **John Singho v. Julis Appu** 10 NLR 351, to illustrate that the above position is the settled law, where it was held that Section 22 requires an objection for want of parties to be taken at the earliest possible opportunity, and that "*otherwise such objection will be considered to have been waived*".

Considering the above, I conclude that the learned High Court Judge had not erred with regard to the application of the relevant provisions in considering the motion filed by the Defendants and I answer the first question of law on which leave was granted in the negative.

(25) As the '(IV)'th question of law on which leave was granted is connected to the above, I wish to deal with the said question before I proceed to consider the other questions of law on which leave to appeal was granted.

(26) The issue raised before us was whether the learned High Court Judge could have come to the conclusion that the 1st and the 3rd to 6th Defendants were not necessary parties, in the absence of any oral or documentary evidence being placed before the court. It was contended that the learned High Court judge could not have decided the issue merely on the motion filed by the Defendants.

(27) The Learned High Court Judge had been of the view that an application for the misjoinder of parties can be made by way of a motion in terms of Section 22 read with Sections 18 and 91 of the Civil Procedure Code; *"The filing of an affidavit or an answer is not mandatory for the making of an application under Section 22 of the Code and the only requirement is to file a motion as required by Section 22 of the Code."* (Page 7 of 'X6'). In the case of **Uragoda v. Jayasinghe** 2004 (1) SLR 108 it was held that "*The issue of misjoinder of parties ought to have been taken by motion in terms of Section 91 read with Section 18 of the Code*." The learned High Court Judge has

relied on the decision in **Uragoda v. Jayasinghe** (supra) in support of this legal position. Also see **Hapuaratchchi and Another v. Dhanapala and Another** (2005) 3 SLR 141 and **London and Lancashire Fire Insurance Co. v. P. & O Company** (18 N.L.R. 15).

(28) The sufficiency of the material before the court, in considering an application made in terms of Section 22 of the CPC is a question of fact. Depending on the facts and circumstances of each case, it is incumbent on the trial judge to decide as to the sufficiency of material, at the point of considering such application. I do not think that there is a rule to say, adducing material is *'sine qua non'.* In the case before us, the Plaintiff had filed 15 documents as a part and parcel of the plaint including the 'Sales Agency agreements' the Plaintiff relied on.

(29) Furthermore, Paragraph 4 and 5 of the Plaint clearly spell out that, initially there had been an oral agreement between the Plaintiff and the 2nd and 3rd Defendants and /or with the 1st Defendant, which was fortified by a notarially executed written agreements [P2 to P5].

(30) The proceedings of 19th October 2015 reflects that the court had been put on notice of 'misjoinder parties' and an application had been made on behalf of the Defendants seeking permission to file written submissions to substantiate that position. Although it had been submitted on behalf of the Plaintiff that all Defendants are necessary parties, no objection was raised with regard to the application made on behalf of the Defendants nor an application made, seeking permission to adduce evidence or other material in order to support the Plaintiff's position on the matter, which they very well could have done. Accordingly, the court ordered both parties to file written submissions.

(31) In the case of **Adlin Fernando v. Lionel Fernando** (1995) 2 SLR 25 it was held; "*(1) That provisions of the Civil Procedure Code, relating to*

*the **joinder of** causes of action and **parties** are rules of procedure and NOT substantive law. Courts should adopt a common sense approach in deciding questions of misjoinder or non-joinder."* [Emphasis Added].

(32) It was also held in the case of **Fernando v. Perera** 2004 (1) SLR 108 "*The issue of misjoinder ought to have been taken by motion in terms of Section 91 of the CPC read with Section18 of the Code*". Considering the above, I resolve the (IV) the question of law referred to above, also in the negative.

The Necessary Parties

(33) Both, the 2nd and 3rd [(i) and (ii)] questions of law on which leave to proceed was granted relate to the issue as to whether the presence of, the 1st and the 3rd Defendants and the 4th to 6th Defendants respectively, is necessary for full and effective adjudication of the cause of action referred to in the plaint.

(34) The question as to 'who is a necessary party' in the context of 'addition or striking out of parties' to an action, is dealt with under Section 18 (1) of the Civil Procedure Code.

Section 18 (1) of the Civil Procedure Code states as follows;

*(1) "**The court may** on or before the hearing, upon the application of either party, and on such terms as the court thinks just, **order** that the name of **any party; whether as plaintiff or as defendant improperly joined, be struck out;** and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, 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 to*

effectually and completely to adjudicate upon and settle all the questions involved in that action, be added." [Emphasis added].

(35) Our courts have identified that Section 18 has two limbs which contemplate the addition of two different types of persons

(i) Persons who "ought to have been joined, whether as plaintiff or defendant."

(ii) Persons 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 that action.

(36) In **Weeraperuma v. De Silva** 61 NLR 481 at page 484, Basnayake C.J. stated *"… the grounds on which a person may be added as a party to an action are either (i) that he ought to have been joined as a plaintiff or defendant or (ii) that his presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action."*

In **The Chartered Bank v. De Silva** 67 NLR 135 at page 137, Sri Skanda Rajah J. observed; "*Section 18 (1) of our Code, like Order 1 Rule 10 (2) of the Indian Code, makes a distinction between the two classes of persons, viz. persons who ought to have joined, i.e., necessary parties, and persons whose presence is necessary to enable the Court to completely and effectually to adjudicate upon and settle all the questions involved in the suit, i.e., proper parties."*

(37) In **Seylan Bank PLC v. New Lanka Merchants Marketing (PVT) Limited & Others** SC Appeal No. 198/2014, it was observed that the type of persons contemplated in the first limb of section 18 (1) "*are persons who must be added as parties since they are entitled to relief upon or are liable upon the same cause of action which is the subject matter of the case",* whilst the second limb contemplated;

"persons who may not be entitled to relief upon the cause of action which is the subject matter of the case (who will be encompassed by the first limb as set out earlier) but, nevertheless, are persons whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in that action. This type of persons who should be added under and in terms of the second limb of Section 18 (1), are usually referred to as "necessary parties"." (at page 12)

(38) The Plaintiff has contended that the Defendants are those who fall within the aforementioned 2nd limb. In **Seylan Bank PLC c**ase (*supra*) the Supreme Court analysed in depth the various tests formulated and applied in English as well as Sri Lankan Courts to determine whether a particular party should be added as a 'necessary party' to a pending action. Following an extensive examination of the tests utilized by the courts to determine whether a particular party should be added as a 'necessary party', the Supreme Court summarized the tests which may be used in determining this question.

The guidelines that were laid down are as follows;

(i) A Court should keep in mind the desirability of reducing the multiplicity of litigation and, therefore, interpret Section 18 (1) widely;

(ii) However, the object of preventing the multiplicity of litigation does not justify the addition of a party if the addition is not permitted by the words used in Section 18 (1);

(iii) In terms of the first limb of Section 18 (1), a person who must be added because he is a party "who ought to have been joined, whether a plaintiff or defendant", will be a person who should have been named as a plaintiff in terms of Section 11 of the Civil Procedure Code or who should have been named as a defendant in terms of Section 14 of the Civil Procedure Code;

(iv) In terms of the second limb of Section 18 (1), a person who should be added because he is a "necessary party", is a person whose presence before the Court is necessary in order to enable the Court to, effectually and completely, adjudicate upon and settle all the questions involved in the pending action;

(v) Accordingly, a person will be a "necessary party" if he will be bound by the determination of the pending action;

(vi) Similarly, a person will be a "necessary party" if the determination of the pending action will affect his legal right;

(vii) Further, a person will be a "necessary party", in appropriate circumstances, if the determination of the pending action will affect his pecuniary interests or commercial interests;

(viii) A person who is not bound by the determination of a pending action or whose legal rights, pecuniary interests or commercial interests are not affected by the Orders sought in that action may, nevertheless, be added as a "necessary party", if his presence before the Court as a party to that action (and not merely as a witness) is required to, effectually and completely, adjudicate upon and settle all the questions involved in that action. For example, to enable one of the parties to effectually and completely establish their case or to effectually and completely obtain the reliefs they seek in the action;

(ix) Unless one or more of the circumstances described above exist, a person should not be added to a pending action upon a claim that he is a "necessary party" merely because one of the parties to that pending action had a separate dispute with or claim against him or merely because he has a separate dispute with or claim against one of the parties to that action;

(x) *A person is not a "necessary party" merely because he has relevant evidence to give or because he is interested in and wishes to involve himself in the correct solution of the case or because he wishes to be*

(39) Although the application of these guidelines may depend on the facts of each case, they can be used to provide assistance to the court in determining whether the 1st, 3rd -6th Defendants who have been discharged are in fact necessary parties to the action.

(40) I shall now examine the Plaintiff's contention that the 1st, 3rd -6th Defendants are 'necessary parties' to the action in question, in terms of the second limb of Section 18 (1) and the tests applied in **Seylan Bank PLC v. New Lanka Merchants Marketing (PVT) Limited & Others** (*supra*)

(41) The Plaintiff's cause of action against the Defendants, as referred to earlier, is for the recovery of monies due to the Plaintiff, in terms of the Sales Agency agreements ['P2' to 'P5']. Upon the perusal of the Plaint, the Agreements which are held out to be the subject matter of the present action, is clearly between the Plaintiff on the one part and the 2nd Defendant on the other part.

(42) The 2nd Defendant which is incorporated as a private company is a juristic person who has the capacity to enter into contracts. Rights and obligations flowing from the contracts do not in general reach beyond the two contracting parties. According to Chitty [2nd Edition, Chapter 17] *"No one may in general be entitled to rights or bound by obligations flowing from the terms of a contract to which he is not a party."* The essence of a registered company is that it has a legal personality which is separate from its members. The legal foundation of this concept is found in the case of **Salomon v. Salomon & Co. Ltd.** [1897] AC 22 in which the House of Lords laid down the universal principle that a company is a distinct legal person entirely different from its members. This principle of separate legal personality is referred to as the 'veil of incorporation'. As a result of this case, the courts have generally considered themselves bound by the concept

that a company is a separate legal person distinct from its members and would generally not go behind the veil of incorporation.

(43) The cause of action in this case is simply a contractual violation where one party to the contract has failed to settle payments due to the other. On a perusal of the agreements marked P2-P5 it is clear that the 1st party to the agreements is the Plaintiff whilst the 2nd party is the 2nd Defendant Company, namely, Radiant Trading Company (Pvt) Ltd.

Thus evidently, the party liable to make the payment claimed under the contracts is the 2nd Defendant Company.

(44) The High Court Judge observed that on the perusal of the agreements marked 'P2-P5' it appears that the parties to them are the Plaintiff and 2nd Defendant and that the Directors (4th -6th Defendants) have signed them only as witnesses are therefore should be discharged. Considering the above, I am of the view that the Learned High Court Judge had not erred in arriving at the conclusion referred to above and thus, I answer the questions of law referred to in sub- paragraphs (ii) and (iii) of Paragraph 16 of the Petition also in the negative.

(45) The final question that this court is called upon to answer is, as to whether the impugned order of the Learned High Court Judge is contrary to Sections 14 and 18 of the CPC.

(46) With regard to the above question of law, the argument of the plaintiff was twofold.

(a) The words "on or before the hearing" that occurs in **Section 18** of the CPC should not be read to mean, *"any time before hearing"* but to mean *"after pleadings (plaint, answer and replication if any) are completed"*.

(b) In terms **of Section 14** of the CPC, the plaintiff is permitted to name the defendants and the argument of the Defendants that no relief could be obtained against the 1st, and 3rd to the 6th Defendants, ought not to have been entertained by the learned High Court Judge as it was premature and the discharging of those Defendants from the case, offended Section 18 of the CPC.

(47) In order to substantiate their argument, the Plaintiff relied on the decision in the case of **Anil Kumar Singh v. Shiv Nath Mishra** (1995) SCC (3)147, where it was observed that *"The object of the rule is to bring on record all persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings….."* . Relying on the decision in **Seylan Bank PLC v. New Lanka Merchants Marketing (PVT) Ltd and others** SC Appeal 198/2014 it was submitted on behalf of the Plaintiff that, under the second limb of Section 18 (1), persons who may not be liable upon the cause of action, but nevertheless, are persons whose presence before the court is necessary to enable the court to effectually and completely adjudicate upon and settle all questions in that action could be added as parties.

(48) The cause of action in this case, which I have referred to earlier in the judgement, is simply a contractual violation alleged, where one party to the contract has failed to settle payments due to the other. On the perusal of the agreements marked P2-P5 it is clear that the 1st party to the agreements is the Plaintiff whilst the 2nd party is the 2nd Defendant Company, namely, Radiant Trading Company (Pvt) Ltd. Thus evidently, the party liable to make the payment claimed under the agreements, is the 2nd Defendant Company. Thus, ***the parties to the***

subject matter relating to the dispute [as referred to in the case **of Anil Kumar Singh** (supra)] are the Plaintiff and the 2nd Defendant.

(49) The Learned High Court Judge on a careful examination of the Plaint, other documents filed along with it and the submissions made, had arrived at this very conclusion, i.e. that the Plaintiff had the right to claim the amount stated in the plaint from the 2nd Defendant Company, which was the only other party to the relevant sales agency agreements, other than the Plaintiff and that the discharged Defendants "cannot be considered as necessary parties to adjudicate the real dispute between the Plaintiff and the 2nd Defendant".

(50) The submission made on behalf of the Plaintiff that the words *"on or before the hearing"* in Section 18 of the CPC should be read to mean *"after the pleadings"* is mere *ipse dixit* and devoid of any merit. I do not think the legislators had any intention of imposing any restrictions with regard to the ambit of its application.

(51) **Meideen v. Banda** [1 NLR 51] is one of the earliest cases decided by the Supreme Court where the ambit of Section 18 of the CPC came up for consideration. His Lordship Withers J, observing that Section 18 of our CPC corresponds with the language of Rule 1 of the Judicature Rules of 1883 took guidance and followed the judgment of Lord Esher, M.R., in the case of **Byrne v. Brown**, reported in (1889) 22 QBD 657, p. 666 where Lord Esher observed;

"One of the chief objects of the Judicature Acts was to secure that, ***wherever a Court can*** *see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding….."*

"… Another great object **was to diminish the cost of litigation.** *That being so, the Court ought to give the largest construction to those Acts in order to carry out as far as possible the two objects I have mentioned."* [Emphasis added].

(52) Considering the above, I hold that the words "any time before hearing" in section 18 of the CPC is devoid of any fetters of the nature, contended on behalf of the Plaintiff, as far as the application of the said section is concerned. Accordingly, I answer the question of law referred to in sub-paragraph (v) of paragraph 16 of the Petition in the negative.

Accordingly, I affirm the order of the learned High Court Judge dated 23.09.2016 and dismiss the Appeal of the Plaintiff-Petitioner Appellant subject to costs.

Appeal Dismissed

JUDGE OF THE SUPREME COURT

PREETHI PADMAN SURASENA, J

I Agree.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC. J,

I Agree.

JUDGE OF THE SUPREME COURT