

M/S Dev Infrastructures Pvt Ltd and Others Vs. M/S Jainco Developers Pvt Ltd and Othrs

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SooperKanoon Citation : sooperkanoon.com/34099

Court : Delhi

Decided On : Jan-15-2015

Judge : Hima Kohli

Appellant : M/S Dev Infrastructures Pvt Ltd and Others

Respondent : M/S Jainco Developers Pvt Ltd and Othrs

Advocate for Def. : Mr. Dinesh Kr. Gupta, Mr. Viditi Gupta

Advocate for Pet/Ap. : Mr. Dhananjay Shahi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 3268/2012 Decided on :

15. 01.2015 IN THE MATTER OF: M/S DEV INFRASTRUCTURES PVT LTD & OTHERS Plaintiffs Through : Mr. Dhananjay Shahi, Advocate versus M/S JAINCO DEVELOPERS PVT LTD & OTHRS Defendants Through : Mr. Dinesh Kr. Gupta with Mr. Viditi Gupta, Advocates CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) I.A.No.8280/2013 (by D-3) and I.A.No.8281/2013 (by D-1) both u/O R-I R-10 CPC for deletion of their name from the array of defendants) 1. The present applications have been filed by the defendants No.1 & 3, praying inter alia for deletion of their names from the array of defendants on the

ground of mis-joinder of parties.

2. The plaintiffs have instituted the present suit against three defendants for recovery of a sum of `97,20,000/- with interest, on a joint and several basis. It is the case of the plaintiffs/companies that Shri Praveen Kumar Jain, Director of the defendants No.1 & 2/Company had approached them through their CS(OS) 3268/2012 between the plaintiffs No.1 & 2 and the defendant No.3/company in respect of an immovable property situated at Hargovind Enclave, New Delhi. It has been averred in the plaint that the total sale consideration of the aforesaid property was agreed at `6.00 crores and the plaintiffs had deposited a sum of `2.00 crores in instalments in the accounts of all the three defendants towards the earnest money and it was further agreed that the balance amount will be paid at the time of execution of the sale deed in favour of the plaintiffs.

3. It has been further averred in the plaint that after receiving a sum of `2.00 crores from the plaintiffs as part sale consideration, the defendant No.3/company had proceeded to sell the subject premises to a third party behind their back and when they had approached Shri Praveen Kumar Jain, Director of the defendants No.1 & 2/Company for refund of the amount paid by them, they were extended threats. Later on, Shri Shisher Aggarwal, Director of the defendant No.3/company had returned a sum of `60.00 lacs to the plaintiffs. Shri Praveen Kumar Jain, Director of the Defendants No.1 & 2/Companies had returned a sum of `30.00 lacs to the plaintiffs followed by a sum of `20.00 lacs received from the account of the defendant No.1/Company, totalling to `1.10 crore, thus leaving an outstanding amount of `90.00 lacs, which, as per the plaintiffs, is jointly and severally payable by all the defendants.

4. Mr.Gupta, learned counsel for the defendants No.1 & 3 states that it is the stand of his clients that the amounts received by the defendants No.1 & 3 have been returned to the plaintiffs and therefore, the suit filed for recovery of `90.00 lacs from the defendants jointly and severally is not maintainable vis-a-vis defendants No.1 & 3/companies and nor is the presence of the said defendants necessary to effectively and finally adjudicate the disputes raised by the plaintiffs in this suit.

5. Learned counsel for the defendants No.1 & 3 submits that a perusal of the averments made in the present applications would reveal that the defendants No.1 & 3 have disputed the averments made in the plaint and asserted that there is no privity of contract between them and the plaintiffs and further that the defendant No.3/Company has already refunded the amounts received by it from the plaintiffs.

6. The aforesaid submissions are however rebutted by the learned counsel for the plaintiffs, who submits that the plaintiffs have instituted the present suit jointly and severally against all the three defendants for recovery of the suit amount and the averments made by the defendants No.1 & 3 in the present applications can only be established after evidence is led by the parties, and not at this preliminary stage.

7. Before considering the submissions made by the learned counsels for the parties, it is necessary to examine the relevant provision of Order I Rule 10(2) of the CPC that empowers the court to strike out or add parties in a suit, which is extracted hereinbelow for ready reference:

10. (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.

8. The general rule relating to impleadment of parties is that the plaintiff in a suit, being dominus litis, has the right to choose the parties against whom he proposes to institute a suit. The plaintiff is not obliged to implead a party as a defendant in his suit against whom he does not propose to seek any relief. In other words, the plaintiff cannot be compelled to implead an unwanted party in his suit. However, the rule is subject to the provisions of Order I Rule 10(2) of the CPC as reproduced above.

9. The aforesaid provision clarifies that a court may, at any stage of the proceedings, either upon or without an application being filed by either party, and on such terms as may appear to it, to be just, issue directions for adding any of the persons as a party, who ought to have been, in the first instance, joined as plaintiff(s) or defendant(s), but were not added or where the court considers the presence of a person before it necessary for enabling it to effectively and completely adjudicate upon and settle the questions involved in the suit. Further, wherever, it appears to be just to the court, it may order the name of any party, improperly joined whether as a plaintiff or a defendant, to be struck out. In other words, the court has been given ample discretion to add as a party, any person who is found to be a necessary or a proper party or delete the name of a party who has been improperly joined. The said discretion vested in the court to either allow or reject an application of a person claiming to be a proper party or an improper party depends upon the facts and circumstances of each case. No person has a right to insist that he should be impleaded as a party, nor does he have any right to insist that his name be deleted from a proceeding, if the court thinks otherwise. However, the aforesaid discretion ought to be governed by the rules and must not be arbitrary, vague or fanciful.[Refer: Ramji Dayawala & Sons (P) Ltd. Vs. Invest Import (1981) 1 SCC80 10. In the case of Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., reported as (2010) 7 SCC417 while advertng to the manner in which the courts ought to exercise their judicial discretion to determine as to whether a party is a necessary or a proper party for adjudication of the dispute raised, the Supreme Court had made the following pertinent observations :

22. Let us consider the scope and ambit of Order 1 Rule 10(2) 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 subrule can be exercised either suo motu 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.

(Emphasis added) 11. The contention of the counsel for the defendants No.1 and 3 that his clients are neither necessary, nor proper parties in the present proceedings and their names ought to be deleted from the array of defendants, has to be examined in the light of the averments made by the plaintiffs in the plaint qua the said defendants.

12. A perusal of the narration of facts made in the plaint reveals that the plaintiffs have attributed a liability not only on the defendant No.2, but also on the defendants No.1 & 3 and blamed all of them for misleading the plaintiffs into purchasing the immovable property situated at Hargovind Enclave, Delhi, and owned by M/s. Sparsh Builders Pvt. Ltd. The plaintiffs have stated that on the inducement of all the three defendants, they had parted with a sum of Rs.2.00 crores for purchasing the aforecited property and out of the total sum of Rs.2.00 crores paid by them towards earnest money, a cheque of Rs.50.00 lacs was drawn by them in favour of the defendant No.1 and the said cheque was duly cleared on 11.8.2008 and on the very next day, the said property was clandestinely sold to a third party.

13. In para 2 (r) & (t) of the plaint, it has been averred that when the Directors of the plaintiffs had visited the offices of the defendants on several dates for seeking refund of Rs.2.00 crores, they were threatened and warned by the defendants of dire consequences. Later on, the defendant No.2 had refunded a sum of Rs.30.00 lacs through two cheques, one in the sum of Rs.20.00 lacs and another in the sum of Rs.10.00 lacs, both drawn from the account of the defendant No.1/Company with an assurance that the remaining amount shall be returned to the plaintiffs very soon. A specific averment has been made in sub-para 2(x) of the plaint that all the defendants have played a fraud upon the plaintiffs and have collusively avoided to make the balance payment of Rs.90.00 lacs out of the sum of Rs.2.00 crores paid to them as earnest money.

14. In para 9 of the plaint which is the cause of action para, the plaintiffs have mentioned different dates on which the cause of action had arisen to institute the present suit, and the narration of various dates mentioned therein includes the date, 8.8.2008 on which a cheque of Rs.50.00 lacs was issued by the plaintiffs in favour of the defendant No.2, then on 13.11.2010, when the defendant No.2 had returned a sum of Rs.20.00 lacs to the plaintiffs through the account of the defendant No.1.

15. Apart from the narration of the facts made in the plaint, even in the cause of action para, the plaintiffs have specifically stated that the balance earnest money of `90.00 lacs is in the possession of all the three defendants and they are jointly and severally liable to reimburse them for the said amount along with interest. At this stage, the averments made by the plaintiffs in the plaint have to be accepted as correct. Simply because the defendants No.1 & 3 deny having any role in the transaction entered into by the plaintiffs in respect to the subject property, would not be a ground for this Court to strike off their names from the array of defendants.

16. Given the aforesaid averments made in the plaint, the submission made by the counsel for the defendants No.1 and 3 that his clients are neither necessary, nor proper parties to the dispute raised by the plaintiffs, is not borne out from a reading of the plaint. The suit is at a nascent stage and pleadings have not been completed and nor have the issues been framed. This Court is therefore of the opinion that the prayer made in the present applications for deletion of the names of the defendants No.1 and 3 from the array of defendants cannot be entertained at this stage.

17. Accordingly, the submission of the counsel for the defendants No.1 & 3 that his clients are neither necessary, nor proper parties in the present proceedings and their names ought to be deleted from the array of defendants, is turned down, in the given facts and circumstances. The present applications are found to be devoid of merits and are accordingly dismissed. (HIMA KOHLI) JUDGE
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