

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

Date of Reserve: 8th March, 2010
Date of Order: 21st April, 2010

CM(M) No. 594/2007

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21.4.2010

Greenways Shipping Agency Pvt. Ltd. ... Petitioner
Through: Mr. Manoj Khanna, Advocate

Versus

United India Insurance Co. Ltd. & Anr. ... Respondents
Through: Mr. K.L.Nandwani, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

By this petition, the petitioner has assailed an order dated 4th January, 2007 whereby an application of the petitioner under Order 1 Rule 10(2) read with Section 151 CPC was disposed of. The application was made seeking deletion of name of petitioner from the array of defendants, dismissal of the suit as well as notice issued by the Court to defendant no.1 (petitioner herein) and issue of notice to Defendant no.3, who was made party to the suit on the basis of pleadings of defendant no.1.

2. A suit was filed by respondent no.1 (insurance company) against petitioner (defendant no.1) for recovery of the amount received. The said amount was to be recovered from defendant no.1 by respondent no.1 under a right of recovery granted to it by insured vide a letter of subrogation-cum-power of attorney executed by defendant no.2 (insured) entitling it to

recover the amount of loss suffered due to act of petitioner. The petitioner in the WS had taken a stand that petitioner was only an agent of M/s Evergreen Shipping Co. Ltd. and it was acting on behest of its principal. On this submission made by the petitioner in the WS, M/s Evergreen Shipping Co. Ltd. the alleged principal was also impleaded as a party as defendant no.3. The trial Court after impleading defendant no.3 as a party dispensed with the service of notice to defendant no.3 vide order dated 19th July 2006 on the ground that defendant no.1 being agent of defendant no.3 was already representing defendant no.3. By application under order 1 Rule 10 CPC petitioner (defendant no.1) submitted that defendant no.1 and 3 were two separate entities and they had no common interest and since defendant no.1 had disclosed the name of the principal and the principal had been made a party to the suit no cause of action would survive as against defendant no.1 and therefore he prayed that name of defendant no.1 be struck off. Simultaneously, he prayed that since the claim as against defendant no.3 had become barred by limitation when defendant no.3 was added as a party so suit as against defendant no.3 be also dismissed as no cause of action survived. The trial Court turned down this plea on the ground that defendant no.1 cannot be absolved of liability of payment of due amount merely on the bald plea that defendant no.1 was agent of defendant no.3 as he had not placed any document on record showing existence of agency between defendant no.3 and defendant no.1. The prayer for deleting defendant no.3 from the array of parties was also dismissed.

3. It is not disputed that the initial contract was between petitioner and defendant no.2. Unless petitioner proves through cogent evidence that

he was merely an agent and had no liability to pay to the insurance company for the loss suffered by defendant no.2, petitioner could not have been absolved of his responsibility under the suit. Similarly, it being a case of the petitioner that he was an agent of defendant no.3 (later on added) he cannot take a plea that defendant no.3 be not added as a party. However, I consider that since defendant no.3 has been made a party on assertions made by defendant no.1, the court was obliged to serve a notice on defendant no.3. Defendant no.3 also has a right to take a stand independent of petitioner. The Court cannot presume that whatever was stated by defendant no.1 in respect of defendant no.3 was truthful. The Court therefore could not have dispensed with service of defendant no.3 and could not have disallowed defendant no.3 from filing WS.

4. I uphold the order of the learned trial Court as far as disallowing of application for deletion of name of defendant no.1 (petitioner) is concerned. However, the order of the trial Court dispensing with service of defendant no.3 and not bringing on record WS of defendant no.3 independently, is contrary to the principles of natural justice. No liability can be fixed on defendant no.3 without hearing defendant no.3, merely on the basis of allegations of defendant no.1.

5. In *Sumtibai v. Paras Finance Company* (2007) 10 SCC 82, Supreme Court observed that every party in a case has a right to file a Written Statement. This is in accordance with principles of natural justice. The Civil Procedure Code contains rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both the parties to get a

hearing. It would be strange if an added parties are not allowed to take a defence.

6. I, therefore consider that the trial Court should have served a notice on defendant no.3 and allowed defendant no.3 to file WS and take an independent stand. The order of the trial Court to that extent is reversed and the trial Court shall serve a notice on defendant no.3 and allow defendant no.3 to file WS. With this the petition stands disposed of.

April 21, 2010
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SHIV NARAYAN DHINGRA, J.