

* **HIGH COURT OF DELHI : NEW DELHI**
TR.P(C) No.46/2010

Raheja Builders Pvt. Ltd.
215-216, Rictangle-One,
D-4, District Centre,
Saket, New Delhi-110 017

.....Petitioner

Through: Mr.G.L.Rawal,
Sr.Advocate with
Mr.Kuljeet Rawal,
Advocate

Versus

M/s Rathi Ferrous Trading Pvt. Ltd.
1/5812, Loni Road,
Shahadara, Delhi-110 032.

.....Respondent

Through: None

ORDER
29th September, 2010

V.B.Gupta, J.

Present transfer petition under Section 24 of Code of Civil Procedure (for short as 'Code') has been filed by the petitioner for withdrawal of Suit No. 43/2009 titled as "M/s Rathi Ferrous Trading Pvt. Ltd. vs. Raheja Builders Pvt. Ltd.," pending in the Court of Sh. Pawan Kumar Matto, Additional District Judge, Karkardooma Courts, Delhi, and the said suit be tried and disposed of alongwith the present suit, that is, CS (OS) No. 2481/2009, titled as "Rathi Steel Trading vs. Raheja Developers Ltd."

2. It is contended by learned counsel for the petitioner that since both the parties are almost same, being group companies and the alleged dispute is of alleged supply to Raheja Group,

which is common in both the suits and both the suits are having almost all factors which are common, so, in the interest of parties, both these suits should be tried in one Court, that is, by this Court. In support of its contentions, learned counsel has cited following judgments:-

***a) Shah Babulal Khimji vs. Jayaben D.Kania and another,
AIR 1981 SC 1786 and***

***b) Delhi State Committee of Communist Party of India (Marxist) vs. Rajesh Malik & others,
69 (1997) DLT 622.***

3. As per copies of plaint of both the suits filed by the petitioner, it is manifestly clear that parties in both the suits are different and nature of both the suits is also different. Petitioner has cleverly not stated as to what is the stage of the suit which is pending before the Court of Additional District Judge, Delhi.

4. As per copy of the plaint of the suit pending before the Additional District Judge, the parties are;

(a) M/s Rathi Ferrous Trading (P) Limited Plaintiff
versus

M/s Raheja Builders (P) Ltd. Defendant

Whereas, in the suit pending in this Court, the parties are;

(b) M/s Rathi Steel Limited Plaintiff
versus

M/s Raheja Developers (P) Ltd. Defendant

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Thus, in both the suits, plaintiff as well as defendant are different.

5. Suit No. 43/2009 pending before the Additional District Judge, is under Order 37 of the Code, whereas Suit No. CS (OS) No. 2481/2009, was initially filed in this Court under Order 37 of the Code, but later on the same is ordered to be treated as an ordinary suit.

6. Both these suits have been filed under different provisions of law and the procedure for conducting the trial in both the suits is also different.

7. Moreover, petitioner in entire petition has nowhere stated as to what is the stage of the suit pending before the Additional District Judge, as to whether any application for leave to defend has been filed by him or not; whether leave, either conditional or unconditional, has been granted or not or leave has been refused. In the absence of above relevant particulars having not being placed before this Court, inference has to be drawn against the petitioner.

8. As already stated above, since parties in both the suits are different and both these suits are of different nature, the judgments cited by learned counsel are not applicable to the facts of the present case.

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9. Moreover, plaintiff of Suit No. 43/2009, pending before the Additional District Judge, shall be deprived of right of appeal, if that suit is transferred to this Court which would tantamount to the violation of Article 14 of the Constitution of India.

10. Under these circumstances, present petition being not maintainable, is hereby dismissed.

September, 2010
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V.B.GUPTA, J.