

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

+ **FAO (OS) 624/2010**

% Reserved on: October 27, 2010

Decided on: November 12, 2010

RAHEJA BUILDERS PVT. LTD.
215-216, Rectangle-I,
D-4, District Centre,
Saket, New Delhi-110 017

..... Petitioner
Through: Mr. G.L.Rawal, Sr. Advocate with
Mr. Rajesh Rawal, Advocate.

versus

M/S. RATHI FERROUS TRADING P. LTD.
1/5812, Loni Road,
Shahadara, Delhi.

..... Respondent
Through:

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. The Transfer Petition under Section 24 of the CPC filed by the Appellant sought transfer and thus clubbing of two Suits for being tried

together, by two different companies though under the same flagship pending in different Courts that is the District Court and the High Court. The said Transfer Petition was dismissed by the learned Single Judge and after hearing the learned counsel for the Appellant at length we also endorse the same.

2. M/s. Rathi Steels Ltd., a company incorporated under the Companies Act filed a Suit against M/s. Raheja Developers Pvt. Ltd. a company also incorporated under the Companies Act under Order XXXVII for recovery of a sum of ₹29,81,601/- in this Court being CS (OS) No.2481/2009. Yet another Suit was filed by M/s. Rathi Ferrous Trading Pvt. Ltd., the Respondent herein against M/s. Raheja Builders Pvt. Ltd. both being companies duly incorporated under the Companies Act under Order XXXVII for recovery of a sum of ₹11,48,058/- before the District Judge, Karkardooma Courts, Shahdara, New Delhi. It is contended by learned counsel for the Appellant that the parties in both the Suits are the same being the same group companies and the dispute in the two suits is as regard the supply of HSD Bars to the Appellant group companies, thus in the interest of both the parties these Suits should be tried together in this Court. Reliance is placed on *Delhi State Committee of Communist Party of India (Marrist) v. Rajesh Malik & Ors.*, 69 (1997) DLT 622.

3. CS (OS) 2481/2009 filed in this Court under Order XXXVII CPC was on 1st June, 2010, ordered to be tried as an ordinary Suit and thus will now have to undergo the normal rigors of the trial. Apparently, it is this decision of this Court to try CS (OS) 2481/2009 as an ordinary Suit which prompts the Appellant to file the Transfer Petition. The Appellant being the Defendant in the two suits seeks the transfer of the Suit pending before the learned Additional District Judge being Suit No.43/2009 titled as “M/s Rathi Ferrous Trading Pvt. Ltd. v. Raheja Builders Pvt. Ltd.”, to this Court and to be tried and disposed of along with CS (OS) 2481/2009 titled as “Rathi Steel Trading v. Raheja Developers Ltd.” by way of this Transfer Petition under Section 24 of the CPC in August, 2010. Not only is the exercise of the Appellant seeking withdrawal and transfer of the Suit No. 43/2009 to this Court *mala fide* but also impermissible in law. The contention of the Appellant that the parties in the two Suits are the same is erroneous and contrary to the law. A company duly incorporated under the Companies Act is a distinct legal entity. The commonality of the flagship does not change the legal status. The claims also cannot be said to be the same. Each transaction of supply of goods is an independent cause of action and thus cannot call for clubbing of the Suits. Reliance of the Appellant on *Delhi State (supra)* is misconceived. In the said suits both the parties were same and were litigating for the same property that is C-9, New Multan Nagar, Delhi one being a

petition for grant of probate and the other for possession and mesne profit in respect of the said property. The learned Single Judge decided on the facts of the case and laid down no law which requires consideration by the Division Bench. Each case of transfer of a suit under Section 24 of the CPC is to be decided on the facts particular to that case. Normally suits in respect of the same property between the same parties should be tried by the same Court in order to avoid conflicting decisions. However, in the present case parties are different, the cause of action is different, thus there being no commonality of issues. No case for transfer of the suit under Section 24 CPC is made out.

4. We find no infirmity in the Order of the learned Single Judge. The Appeal is dismissed with costs of ₹15,000/- payable to the Delhi High Court Bar Association Library Fund.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

NOVEMBER 12, 2010
mm