

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

% *Date of Judgment: 20.10.2011*

+ **CM (M) No. 741/2011 & CM No. 12087/2011**

SHRI MAHENDER KUMAR AGGARWAL Petitioner
Through: Mr. Jinender Jain, Advocate.

Versus

M/S ANSAL BUILDWELL LTD. Respondent
Through: None

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. The petitioner is aggrieved by the order dated 07.02.2011 vide which the application filed by the defendant seeking deletion of defendants No. 2 & 3 under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as the 'Code') had been allowed and defendants No. 2 & 3 had been permitted to be struck off from the array of parties.

2. Record shows that the present suit is a suit for recovery of

of damages for a malicious prosecution. It had been filed by Mr. Mahender Aggarwal arraying M/s Ansal Buildwell Ltd. as defendant No. 1. There is no dispute to the factum that M/s Buildwell Ltd. is a duly incorporated company. Defendants No. 2 & 3 Gopal Ansal and Anurag Verma were the Managing Director and General Manager of the said company; averments made in the present suit have been perused. This is a suit for damages on account of malicious prosecution and defamation; contention is that defendant No. 1 had filed a false and malicious complaint against the plaintiff pursuant to which an FIR had been registered which FIR had been quashed by the order of Justice S.N. Dhingra on 28.09.2007. While quashing the said FIR, it had been noted that the defendants had committed a misuse of the judicial process; it was in these circumstances that the present suit for malicious prosecution came to be filed by the plaintiff against defendant No. 1; defendants No. 2 & 3 have also been arrayed in the memo of parties. In the body of the plaint in para 10 it had been stated that it is clear that conduct of the defendants was to hatch a criminal conspiracy against the plaintiff; the defendants as per para 10 makes a reference to the defendants. Relevant would it be to extract the FIR and the averments made therein. It is not in dispute that pursuant to the present complaint made under CM (M) No. 741/2011

Section 156(3) of the Code of the Criminal Procedure; the criminal machinery had been set in motion and the aforementioned FIR bearing No.612/2010 had been registered on the asking of the Magistrate. The complaint had been filed by defendant No. 1 under Section 384/506/120-B IPC; this FIR as noted supra has since been quashed.

3. The body of a plaint necessarily deciphers what the plaintiff has to state; the impugned order has correctly noted this and recorded that there is no specific averments against defendants No. 2 & 3 and as such the joinder of defendants No. 2 & 3 is misplaced. Defendant No. 1 is admittedly an individual; he being a company and having an identity of its own. The plaint did not disclose any cause of action against defendants No. 2 & 3; the twin test for deciding an application under Order 1 Rule 10 of the Code had also been adverted to; a necessary party would be a party against whom a relief is sought or in the absence of that party no effective decree can be passed. Applying the said test, the Court had correctly noted that defendants No. 2 & 3 are liable to be deleted as no relief against them has been claimed and their presence is also not necessary for effective disposal of the suit; the impugned order in no manner suffers from any infirmity.

4. Reliance by learned counsel for the petitioner upon the
CM (M) No. 741/2011

judgment reported in 138 (2007) DLT 284 B. Rath Vs. David Ball & Others is totally misplaced. Facts of the said case are distinct and in no manner applicable in the present scenario. Petition is without any merit.

5. Dismissed.

INDERMEET KAUR, J

OCTOBER 20, 2011

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