

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

+ **FAO (OS) 455/2013 & CM No.16137/2013 (Stay)**

% **Reserved on: 05.05.2014**  
**Pronounced on: 22.07.2014**

**SHINICHORO ISHIKAWA & ORS** ..... Appellant  
Through: Mr. Jayant K.Mehta with Mr. Saeed  
Husain, Advs.

Versus

**NARENDER KUMAR SEHGAL & ORS** ..... Respondents  
Through: Mr. Anil Panwal, Adv. for R-3.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

### **J U D G M E N T**

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. The present appeal has been filed under Section 10 of Delhi High Court Act, 1966, challenging the order dated 02.09.2013, passed by the learned Single Judge in I.A No 10913/2011 in CS(OS) No 993/2011.
2. The defendant Nos.2, 4 and 5 are the appellants before us.
3. The plaintiff/respondent No.1 herein filed the Suit for recovery of Rs.43,29,040/- from the defendant No.1 company. The defendant Nos. 2, 3, 4 and 5 are stated to be the Chairman, Managing Director, and Directors respectively of the defendant No.1 company.

4. The plaintiff claims that he was appointed as Sales Executive in the Defendant No.1 company on 18.06.1998 on a monthly salary of Rs.6,000/-. It was alleged that he suffered throat cancer on account of the harassment caused by the defendants and that he was not allowed by the defendants to discharge his duties from 14.04.2001 onwards. It was also alleged that in spite of the legal notice got issued under Sections 433 and 434 of Companies Act, the defendants failed to respond and therefore he filed a petition under Section 439 of the Companies Act for winding up of the defendant No.1 company. In the meanwhile, the plaintiff was paid Rs.45,410/- and therefore, the Company petition was dismissed as withdrawn recording the payment that was already made and granting liberty to the plaintiff to file appropriate civil proceedings in respect of the balance claim.

5. Thereupon, the plaintiff came up with CS(OS) No.993/2011 (out of which the present appeal arises) claiming that a sum of Rs.43,29,040/- as detailed in Para 14 of the plaint, is still due from the defendant No.1 company and accordingly seeking a decree against the defendants for recovery of the said amount along with interest of 24% per annum.

6. The defendant Nos.2, 4 and 5 (the appellants herein) filed I.A.No.10913/2011 under Order VII Rule 11 of Code of Civil Procedure, 1908 with a prayer to reject the plaint against them and to strike out their names from the array of the defendants in the suit contending *inter alia* that the plaintiff's claim is directed only against the defendant No.1 and the plaint allegations are made only against the defendant Nos.1 and 3. It was contended that the defendant Nos.2, 4 and 5 have no privity to any of the claims made by the plaintiff which are inter se the plaintiff and the

defendant No.1 company and therefore they are neither necessary nor proper parties to the suit.

7. The said application was dismissed by the learned Single Judge by the order under appeal dated 02.09.2013. Hence, the present appeal by the defendant No.2, 4 and 5.

8. We have heard the learned counsel for both the parties. As could be seen from the material available on record, the defendant Nos.2, 4 and 5/the appellants herein claim to have resigned as Directors of the defendant No.1 company on 03.03.2003. It is contended by them in their application under Order VII Rule 11 CPC, 1908 that they are merely the nominee non-whole time directors on the board of the defendant No.1 company on behalf of a company named Ishikawa Gaskets Company Ltd, Tokyo which entered into a joint venture agreement with the defendant No.1 company on 17.11.1998. However, the said agreement was terminated and in pursuance thereof the defendant Nos.2, 4 and 5 had resigned from the defendant No.1 company w.e.f 03.03.2003. It is claimed that even during their tenure as Directors of the defendant No.1 company, they had absolutely no role to play in the affairs of the company and that the company was being managed by the defendant No.3-Managing Director alone. Thus, according to them no cause of action concerning the defendant Nos.2, 4 and 5 was established and therefore, the plaint is liable to be rejected so far as defendant Nos.2, 4 and 5 are concerned.

9. The said application was dismissed by the learned Single Judge holding that whether the plaintiff would be able to succeed finally in getting any compensation from the individual defendants or not depends upon what

evidence the plaintiff would be adducing in support of his claim and that the plaint cannot be rejected at the threshold even against the defendant Nos.2, 4 and 5.

10. Having carefully gone through the plaint averments, we are of the view that the learned Single Judge in the facts and circumstances of the case, has rightly held that the plaint cannot be rejected against the Defendant Nos.2, 4 & 5/appellants herein. On a perusal of the plaint, we do not find any substance in the contention of the appellants that no cause of action was disclosed for suing the appellants/defendant Nos.2, 4 and 5 for recovery of the amount claimed.

11. As noticed above, the only contention of the appellants is that they being Directors of the defendant No.1 company cannot be made liable to the suit claim in the absence of any specific allegations against them.

12. It is relevant to note that the suit claim is based on the allegations that the plaintiff was harassed by the defendants on account of which he suffered throat cancer, that he was not extended any financial assistance for his treatment and that from 15.04.2001 onwards he was not allowed to discharge his duties in the first defendant company. Even according to the appellants, they were the Directors on the Board of the defendant No.1 company till 03.03.2003. That being so, the question whether the appellants are in anyway responsible for the alleged loss suffered by the plaintiff requires determination only after the evidence is adduced by both the parties.

13. The law is well settled that company is a juristic person. In ***H.L Bolton (Engineering) Company Ltd Vs. T.J Graham & Sons Ltd., (1956) 3 All ER 624 (CA)***, Lord Denning while dealing with liability of company, in his inimitable style has expressed that:

“ ....A company in many ways be likened to a human body. It has brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in Company are mere servants and agents who are nothing more than hands to do work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.”

While reiterating the aforesaid legal position, the Supreme Court in ***Annetta Hada v/s Godfather Travels and Tours Pvt Ltd., 2012 (5) SCC 661*** further added that in certain cases where the law requires personal fault as condition of liability in a tort, the fault of the manager will be the personal fault of the company.

14. It may be true that the appellants are contending that they were only non-whole time Directors and that no specific allegations were made against them in the plaint. However, these are all aspects which are required to be established on the basis of the evidence that may be adduced by the parties in trial. Therefore, the learned Single Judge is justified in holding that the plaint cannot be rejected at the threshold.

15. To substantiate his contentions that a director cannot be made liable to suit claims in the absence of any specific allegation, the learned counsel for the appellants relied upon *Employees' State Insurance Corporation Vs. S.K. Aggarwal & Ors.*, 1998 (6) SCC 288, *M/s. Faire Brothers (Export Import) Pvt. Ltd. & Anr. Vs. M/s. Nagpur Textiles & Ors.*, 2008 (4) R.A.J. 97 (Del), *Sangeeta Jewels Pvt. Ltd. & Ors. Vs. Ajay Kumar Jain*, 150 (2008) DLT 632, *Tristar Consultants Vs. Customer Services India Pvt. Ltd. & Anr.*, 139 (2007) DLT 688 and *Ranbir Kumar Gugneja Vs. Continental Engines Ltd. & Ors.*, 2011 (1) AD (Delhi) 462.

16. None of the above decisions, according to us, have any relevance for deciding the issue involved in the present case.

17. As we could see, in *Employees' State Insurance Corporation (supra)*, the Supreme Court was interpreting the definition of 'principal employer' contained in Section 40 of Employees State Insurance Act and in that context it was observed that it is the company which is the employer and not its directors either singly or collectively. Similarly, in *M/s. Faire Brothers (Export Import) Pvt. Ltd. (supra)* and *Sangeeta Jewels Pvt. Ltd. (supra)*, the question with regard to the liability of the directors was neither raised nor decided.

18. So far as *Tristar Consultants (supra)* is concerned, there can be no dispute as to the ratio laid down that company is a juristic person and that the directors are agents of company to the extent they have been authorised to perform certain acts on behalf of the company. However, in the case on hand, the suit claim is based upon the alleged harassment by the defendants i.e. the company, the Chairman, Managing Directors and other Directors of

the company. Admittedly, the appellants were the Directors at the relevant point of time. Therefore, it is for the plaintiff to prove the plaint allegations by adducing the necessary evidence. Consequently, the claim of the appellants that they cannot be made liable for the alleged omissions and commissions cannot be decided at this stage.

19. For the aforesaid reasons, we are of the opinion that the learned Single Judge was justified in holding that it is not a matter for rejecting the plaint at the threshold against the appellants herein.

20. The appeal is devoid of any merit and accordingly the same is dismissed.

**CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J.**

JULY 22, 2014

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