



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1770 OF 2019

Rashmin Manilal Shah and Anr.

...Petitioners

V/s

M. Lakhamshi and Co. and Ors.

...Respondents

Mr. Jigar Parmar a/w *Ms. Aishwarya Rajput i/b Mr. Vivek Arya for Petitioners.*

Mr. Bhavik Lalan with *Ms. Preeti Gada i/b Preeti Gada and Associates for Respondent Nos. 1 and 2.*

CORAM: SANDEEP V. MARNE, J.

DATED: 6 OCTOBER 2026.

Order:

1) By this Petition filed under Article 227 of the Constitution of India, Petitioners/Defendant Nos.2 and 3 have challenged order dated 16 November 2018 passed by the learned Judge, City Civil Court at Bombay rejecting Notice of Motion No. 1624 of 2018 filed by them for striking out their names from the array of Defendants or in the alternative for rejection of the plaint against them.

2) Respondent Nos.1 and 2 are the original Plaintiffs, who have instituted S.C. Suit No. 2652 of 2016 in the City Civil Court at Mumbai for recovery of amount of Rs. 68,53,482/- being the principal amount of Rs. 55,00,000/- and interest amount of Rs. 12,84,917/- and Rs. 68,565/- towards arrears of TDS. Plaintiffs have impleaded Efficient Data Pvt. Ltd.

as Defendant No. 1 and its directors (Petitioners) as Defendant Nos. 2 and 3. It is the case of the Plaintiffs that Petitioners had approached them in May 2014 for seeking a friendly loan and Plaintiffs had advanced certain amounts to the Defendants.

3) It appears that 'no written statement' order was passed against the Defendants, which has been recalled by the City Civil Court on 16 November 2018 and it appears that only Defendant No.1 has filed its written statement. Petitioner/Defendant Nos.2 and 3 have not filed written statement. Instead, Defendant Nos.2 and 3 filed Notice of Motion No. 1624 of 2018 seeking striking of their names from the suit under Order VII Rule 11 (a) read with Order I Rule 10 of the Code. The Application was resisted by the Plaintiff by filing reply. By order dated 16 November 2018, the learned Judge of the City Civil Court has rejected Notice of Motion No. 1624 of 2018. Order dated 16 November 2018 is the subject matter of challenge in the present Petition.

4) Mr. Parmar, the learned counsel appearing for the Petitioners submits that the City Civil Court has erred in rejecting the motion preferred by the Petitioners. That the suit can be adjudicated and an enforceable decree can be passed without the Petitioners as parties to the suit. That the suit is filed by the Plaintiffs for recovery of loans which it claims to have advanced to Defendant No.1-Company. That Defendant Nos. 2 and 3 need not be made to go through the trial in respect of the suit related to recovery against Defendant No.1-Company merely because they hold positions as directors thereof. That directors are not necessary or proper parties unless there are averments for lifting of the

corporate veil or where the directors have made themselves personally liable through the contract or guarantee. That the plaint lacks any averments relating to fraud, need for lifting of corporate veil or any guarantee/indemnity being given by the Petitioners. That the suit is essentially against Defendant No.1 to whom the loan was allegedly advanced. That the plaint itself avers that all monies were deposited in the account of the company and that partial repayment is also done by Defendant No. 1-company. That company is a separate and distinct entity in the eyes of law and the directors cannot be held liable for any amounts owed by the company.

5) Mr. Parmar further submits that there is no cause of action made against the Petitioner/Defendant Nos.2 and 3 even if all the averments in the plaint are taken to be true and correct. That the impugned order is based on incorrect reasoning and that therefore, the same needs to be set aside. In support of his contentions, Mr. Parmar relies on judgment of this Court in Sanuj Bathla and Anr. V/s Manu Maheshwari and Anr.¹ and Shri. Sumant Kathpalla V/s Shri. C. S. Subrahmanian Iyer².

6) The Petition is opposed by Mr. Lalan, the learned counsel appearing in Respondent Nos.1 and 2/Plaintiffs. He submits that the plaint contains necessary averments for suing Defendant Nos.2 and 3. He submits that Defendant No.2 has made admissions in various correspondence in relation to the loan transaction. That the email

1 C.R.P. 166/2018 decided on 12 April 2021

2 Writ Petition No 10671 of 2026 decided on 7 May 2025

correspondence is addressed by Defendant No.2 in his personal capacity and not in capacity of a director. He submits that the approach for loan itself was made by Defendant Nos.2 and 3. That therefore Defendant Nos. 2 and 3 are personally liable for repayment of the loan. He submits that the Trial Court has rightly rejected the Notice of Motion after appreciating the position that the suit is based on email exchanges. In support, he relies on the judgments in Saurabh Exports V/s Blaze Finlease and Credits Pvt. Ltd.³, Tristar Consultants V/s V. Customer Services India P. Ltd and Anr⁴, Sinhar Estate Builders P. Ltd and Anr. V/s B. Nataraj⁵ and Kasturi V/s Iyyamperumal and Ors.⁶ He prays for dismissal of the Petition.

7) Rival contentions urged on behalf of the parties, now fall for my consideration.

8) Petitioners are aggrieved by order passed by the City Civil Court on 16 November 2018 rejecting Notice of Motion No. 1624 of 2018, by which they had sought striking of their names from the suit under provisions of Order VII Rule 11(a) read with Order I Rule 10 of the Code. Alternatively, Petitioners had sought a prayer for rejection of the plaint against them. The Trial Court has proceeded to reject the Motion filed by the Petitioners by recording following reasons:-

5. Upon considering the hearing it is evident that the allegations are made against the defendants no. 2 and 3. It is subsequently alleged that

3 2006 (89) DRJ 372

4 C.R.P. No. 365 of 2006 decided on 5 March 2007

5 2008 SCC Online Mad 404

6 (2005) 6 SCC 733

the defendants no. 2 and 3 approached the plaintiff for seeking monetary assistance. It is further pleaded that the plaintiff no. 2 and present defendants no. 2 and 3 are having friendly relations. Further the relief is claimed by the plaintiff against all the defendants. Thus, it cannot be stated that there is not cause of action and there is no pleading against the defendants no. 2 and 3. Notice was also issued against the defendants no. 2 and 3. Email were exchanged by the said defendants with the plaintiff. Thus, considering all these circumstances their names cannot stuck of from the plaint and accordingly I pass the following order.

9) Perusal of the plaint filed in S.C Suit No. 2652 of 2016 would indicate that Plaintiffs are seeking recovery of alleged loan amount of Rs. 55,00,000/- alongwith interest. The plaint contains specific averments that the loan was availed by Defendant No. 1. This is clear from averments in paragraphs 8 and 9 of the plaint, which read thus:

8. The Plaintiffs states that at the end on the first half of the financial year 2014-2015, based on the friendly assistance extended to the Defendant No. 1 company, the Defendant No. 1 company was duty bound to pay to the Plaintiffs a total Sum of Rs. 3,60,834/- (Rupees Three Lakh Sixty Thousand Eight Hundred and Thirty Four Only). The Defendant No. 1 in partial discharge of the obligation to pay the Interest on the First Principal Amount (from 1st October, 2014 to 31 March, 2015 = 182 days; amounting to Rs. 1,51,667/-) as also balance on the repaid amount, on the Second Principal Amount (from 1* October, 2014 to 31% March, 2015 182 days; amounting to Rs. 1,51,667/-) and on the Third Principal Amount (from 30th December, 2014 till 31st March, 2015 = 92 days; Rs. 57,500/-) Defendant No. 1, on 31st March, 2015, forwarded to the Plaintiff a sum of Rs. 3,24,750/- (Rupees Three Lakh Twenty Four Thousand Seven Hundred and Fifty Only) as and by way of interest accrued and calculated on the end of the financial year 2014-2015. The balance Sum of Rs. 36,084/- came to be deducted by the Defendant No. 1 as and by way of TDS, which was undertaken to be deposited by the Defendant No. 1 with the Income Tax Authorities.

9. The Plaintiffs state that, as on 1st April, 2015, the Plaintiffs had aggregately assisted to the Defendant No. 1 company said with a composite amount of Rs. 55,00,000/- (Rupees Fifty Five Lakhs Only), in three installments, which amounts have been duly acknowledged and accepted by the Defendant No. 1 Company ["AGGREGATE PRINCIPAL

AMOUNT" (i.e. First Principal Amount + Second Principal, Amount + Third Principal Amount)]. The Plaintiff states that the entire aggregate principal loan came to be advanced to the Defendant No. 1. In the humble submission of the Plaintiff, the entire aggregate principal amount has been advanced for the purpose of enabling the Defendant No. 1 to expand and solely at the instance on the Defendant Nos. 2 and 3 and in view of the long standing relationship subsisting inter se. The Defendant No. 1 has been since then enjoying and utilizing the Aggregate Principal Amount.

10) The plaint further contains averments that the loan amounts were credited in the bank account of Defendant No.1. There are specific averments in paragraph No. 3, 4, 5 and 7 of the plaint about various tranches of loan amounts being credited into the bank account of Defendant No.1. In paragraph No. 8 of the plaint, there is an averment that partial repayment of loan was made by Defendant No.1.

11) Thus, from holistic reading of the plaint, it clearly appears that the loan amount is availed by Defendant No.1, the same is credited in the account of Defendant No.1 and it is Defendant No.1 who has made the partial repayment. Defendant Nos.2 and 3 are mere directors of Defendant No.1. There is no averment in the entire plaint that Defendant Nos.2 and 3 are personally liable to repay the loan amount disbursed to Defendant No.1. Beyond pleading in paragraph 2 of the plaint that Defendant Nos.2 and 3 had approached the Plaintiff for loan and that there was long standing friendly relations between Plaintiff No. 2 and Defendant Nos.2 and 3, there are absolutely no averments in the plaint alleging that the loan was actually availed by Defendant Nos. 2 and 3 by creating a corporate facade in the form Defendant No.1. There is no allegation in the plaint about the transaction being fraudulent in

nature. There is no averment for need to lift the corporate veil for the purpose of holding that Defendant Nos.2 and 3 are the real beneficiaries of the loan amount.

12) It is well settled that a company is a separate and distinct legal entity in the eyes of law and the directors cannot be personally held liable for amounts owned by the company. It may be possible to recover amounts due and payable by the company from the directors in given circumstances. However, directors of the company cannot be personally sued when the claim is raised essentially against the company. It is only in rare cases where there is any allegation of fraud or misrepresentation against the directors of the company that they can be sued for the purpose of holding that they are personally liable. There can also be a need to lift the corporate veil on account of corporate structure being created to perpetrate a fraud and, in that circumstance, as well, the directors can be personally sued. The law in this regard is well settled in ***Sanuj Bathla*** (supra), in which a single Judge of the Delhi High Court has held in paragraphs 19 to 21 of the judgment as under:-

19. The averments at the highest are that Defendant Nos. 2 and 3 had jointly and personally requested and persuaded the Plaintiff for financial assistance for smooth functioning of the Company. The Company is a Private Limited Company and Defendant Nos. 2 and 3 are its Directors and Principal Officers in-charge and responsible for day-to-day business affairs of the Company. It is further averred that the loan amount was given to the Defendants on a certain rate of interest and while the Defendants were making payment from time to time for some time, but later stopped making the payments. The last payment was made on 05.04.2010 by a cheque of Rs.5 Lakhs.

20. Allegations in plaint do not refer to any transaction with Defendant Nos. 2 and 3 in their personal capacity apart from stating that they were

known to the Plaintiff in a friendly capacity. Although it is claimed that the money was advanced as loan due to personal relation with Defendant Nos. 2 and 3, it is undisputed that the transaction was directly with the Company and loan was advanced in the name of the Company by a cheque. Instalments were being paid to the Plaintiff from the account of the Company. There is no allegation of fraud levelled against Defendant Nos. 2 and 3 and nor is there any averment that the Corporate structure was created as a mere facade or camouflage to avoid liabilities.

21. Learned counsel for the Defendant Nos. 2 and 3, in my view, has rightly argued that in the absence of any allegations of fraud or misrepresentation, Directors cannot be held personally liable. It is also not the case of the Plaintiff that the Directors were personal guarantors to the loan transaction or had assured to indemnify the amount. It is a settled law that doctrine of lifting the corporate veil is available to the Plaintiff where it is permitted by the Statute or Corporate structure is instituted to perpetuate a fraud. The averments made in the plaint, in my view, do not justify the lifting of the corporate veil to make the Directors personally liable. The cryptic observation of the Trial Court, that the facts and circumstances of the case attract the principle of lifting the corporate veil, is not supported by the pleadings and I may also note that the order does not even give any reasons for having so held.

13) In *Shri Sumant Kathpalla* coordinate bench of this Court has held in paragraphs 16 to 22 of the judgment as under:

16. A conjoint reading of the aforesaid provisions would indicate that, though the plaintiff is dominus litis and may implead the parties as defendant to the suit, against whom the plaintiff perceives to have cause of action, the plaintiff does not have an unfettered choice. The primary question that comes to the fore is, whether a party already impleaded or sought to be added, is a necessary or proper party, to the suit. A person who has no semblance of right or interest in the subject matter of the suit, nor the decree passed in the suit has the effect of affecting his rights or liabilities, can be impleaded as a party defendant to the suit. The general rule of dominus litis is thus subject to the provisions of order 1 Rule 10(2) of the Code, which provides for striking out or addition of the parties.

17. It is well recognized that, the deletion or addition of the parties to the suit is not a matter of initial jurisdiction, but that of judicial discretion. Such discretion is required to be exercised keeping in view

all the circumstances. Under the provisions of sub-Rule 2 of Rule 10 of Order 1, the Court is empowered, at any stage of the suit, to add or delete a party. From the phraseology of sub-Rule (2) of Rule 10 of Order 1, it becomes evident that, the person who can be added as a party to the suit ought to be either (a) a person who ought to have been joined as Plaintiff or defendant, but not impleaded or (b) any person whose presence before the Court may be necessary in order to effectively and completely adjudicate upon, and settle the questions involved in the suit.

18. In the case of 'Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Ors. the Supreme Court, expounded the distinction between a necessary party and a proper party in the following term:

"15. A necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

19. The Supreme Court also expounded the nature of the jurisdiction exercised by the Court in the matter of addition or deletion of the parties under Order 1 Rule 10(2) as under:

"22. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order

1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.
(emphasis supplied)

20. Thus, the essential test to add a person as a party defendant to the suit, is whether in the absence of such person no effective decree can be passed in the suit, meaning thereby a necessary party, or though no relief is claimed against a person, the presence of such person, would assist the Court in completely and effectually adjudicating the suit, meaning thereby a proper party. The concept of joinder of a party is inextricably interlinked with the joinder of causes of action. A party can be added to a proceeding, if there is any cause of action against such party as well.

21. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of 'Iswar Bhai C. Patel alias Bachu Bhai Patel vs. Harihar Behera and Anr.'² wherein the Supreme Court enunciated that the simple principle is that, a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined. The observations in para Nos. 11 to 14 read as under:

"11. Order 1 Rule 3 as provides as under:
(extracted above)

12. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid multiplicity of suits.

13. This Rule, to some extent, also deals with the joinder of causes of action inasmuch as when the plaintiff frames his suit, he impleads persons as defendants against whom he claims to have a cause of action. Joinder of causes of action has been provided for in Order 2 Rule 3 which provides as under :-
(extracted above)

14. These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

22. In view of the aforesaid exposition of law, whenever defendant seeks deletion of his name from the array of the defendants, the Court is required to pose unto itself the question as to whether the said defendant can be said to be either a necessary or proper party to the suit. The said determination, would undoubtedly, hinge upon the averments in the plaint and the documents annexed with it. If there is slightest material to show the existence of a cause of action against such person, he cannot be deleted from the array of the defendants for the only reason, that, the plaintiff does not claim whole of relief against such person. However, the necessary nexus between the defendants and the lis ought to be, prima facie, evident.

14) In the present case, once a question is posed as to whether the suit can be adjudicated and whether an enforceable decree can be passed without presence of Defendant Nos.2 and 3, the answer would emerge in the affirmative. Defendant Nos. 2 and 3 are thus neither necessary nor proper parties to the suit which can be effectively adjudicated and an enforceable decree can be passed against Defendant No.1.

15) Mr. Lalan has relied upon judgment of Delhi High Court in ***Saurabh Exports*** (supra) in which case an emphatic finding is recorded that Defendant No.1-Company therein was only a front for the business of Defendant No.2. It is held in paragraph 18 of the judgment as under:

18. In reply to para 2 of the plaint setting out the fact that defendants No. 2 and 3 are the Directors of the company holding 10 equity shares each of Rs. 10/- amounting to Rs. 100/- each, the same are unconditionally admitted in the written statement. It is, thus, obvious that defendant No. 1 company was only a front for the business of defendant No. 2. The role of defendant No. 4 could not clearly emerge in view of the evidence placed on record though he did execute certain document on behalf of defendant No. 1. Defendant No. 4 also did not have any standing on paper in defendant No. 1 company though his wife defendant No. 3 was a Director. Defendant No. 3 is only a house-wife and did not even appear in the witness box. It is, thus, obvious that

defendant No. 2 was running the business in the name of defendant No. 1 company possibly with the help of defendant No. 4.

16) Thus, the judgment in *Saurabh Exports* is clearly distinguishable as there is no averment in the plaint that Defendant No. 1-Company is only a corporate front created by Defendant Nos.2 and 3.

17) Reliance by Respondent Nos.1 and 2/Plaintiffs on judgment of single Judge of Delhi High Court in *Tristar Consultants*, far from assisting their case, actually militates against them. The Delhi High Court has held in the judgment as under:

Order 1, rule 3 of the Code of Civil Procedure requires that where the right to relief in respect of or arising out of the same Act or transaction or series of acts or transactions is alleged to exist against various persons whether jointly, severally or in the alternative and if separate suits were brought against such persons, common questions of law or fact would arise, such persons may be joined in one suit as defendants.

Sub-rule (2) of rule 10 of Order 1 permits a court, at any stage of the proceedings, either upon or without any application of either party to strike out a person improperly joined as a defendant.

In a suit for recovery of money, only such persons can be impleaded defendants against whom averments are made which on proof would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said persons named as defendants.

The other facet of the aforesaid proposition of law is that there must be a cause of action disclosed against a person impleaded as a defendant.

Learned counsel for the petitioner did not dispute that in the plaint there is no assertion against defendant No. 2 that he personally undertook or agreed to clear any liability of the defendant outstanding against the plaintiff. No guarantee or indemnification has been pleaded. But, submission of learned counsel for the petitioner is that every director acts as the agent of a company and therefore as an agent, a

director would be personally liable if he has acted on behalf of the company.

Learned counsel for the petitioner has relied upon a decision of the Supreme Court in *Ram Prashad v. CIT* [1972] 86 ITR 122; (1973) 1 SCR 985. Following passage has been relied upon (page 127):

"Though an agent as such is not a servant, a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant. It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its capacity. A managing director may have a dual capacity."

I am afraid, learned counsel for the petitioner has got it all wrong.

It is settled law that a company is a juristic person. Therefore, a company has to act through a living human being. Collectively, decisions on behalf of the company, are taken by the board of directors of a company. An individual director has no power to act on behalf of a company of which he is a director, unless there is a specific resolution of the board of directors of the company giving specific power to him/her, or, where the articles of company confer such an power.

Directors of companies have been described as agents, trustees or representatives of the company because of the fact vis-a-vis the company they act in a fiduciary capacity. They perform acts and duties for the benefit of the company. Thus, directors are agents of the company to the extent they have been authorised to perform certain acts on behalf of the company.

But directors of a company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company.

This distinction has been ignored by learned counsel for the petitioner.

Directors of a company are referred to as agents of the company in the context of their fiduciary duty to the company and therefore if they derive any personal benefit while purporting to act on behalf of the company, they will be liable to the company and its shareholders. But the directors cannot be treated as acting as agents of the company, in the conventional sense of an agent, vis-a-vis third parties.

18) Thus, the Delhi High Court has held in ***Tristar Consultants*** that a company is a juristic person and that directors of a company do not owe fiduciary or contractual duties or any duty of care to third parties, who deal with the company. It is further held that in a case where directors derive any personal benefit while purporting to act on behalf of the company, they can be held liable. But the directors cannot be treated as acting as agents of the company in conventional sense of an agent vis-a-vis third parties.

19) In ***Sinhar Estate Builders P. Ltd.***, relied upon by Mr. Lalan, a single Judge of the Madras High Court has held that the second Defendant therein had signed the memorandum of understanding only in his individual capacity though he was described as managing director of Defendant No.1-Company. In that case, seal of the company did not find place below signature of the concern Defendant. The Madras High Court has held in paragraph 16 of the judgment as under:

16. Even though there was no specific issue framed before the trial court as to the fact, whether the suit is bad for misjoinder of party like the second defendant, it was contended before this court that the second defendant is not a necessary party to the suit. But on a perusal of exhibit A1 memorandum of understanding itself, will go to show that the second defendant has signed in the memorandum of understanding only in his individual capacity, even though in the memorandum of understanding at clause 1, it is stated that the second defendant is a managing director of Sinhar Estate Builders P. Ltd. (DI), the seal of the company does not find a place below the signature of the first defendant at page 4 of exhibit A1. The plaintiff has filed the suit only on the basis of exhibit A1 memorandum of understanding wherein as per clause IV, the second defendant has to draw six cheques and to hand over the same to the mediator Thiru R. Srinivasan exhibits A6 to A11 are the cheques drawn by the second defendant in favour of the plaintiff which were on presentation dishonoured by the bank. Under such

circumstances, it cannot be said that the suit is bad for misjoinder of party, i.e., the second defendant. Point No. 2 is answered accordingly.

20) In the present case, promissory note has been signed by Defendant No.2 only in his capacity as director of Defendant No.1-Company. There is specific endorsement for "Efficient Data Pvt. Ltd" above the signature of Defendant No.2. Thus, Defendant No.2 has not signed the promissory note in his personal capacity.

21) Lastly, reliance by Mr. Lalan, on judgment of the Apex Court in *Kasturi* (supra) is again inapposite. The Apex Court has led down twin tests for determining as to who is a necessary party under Order 1 Rule 10 of the Code viz. (i) There must be a right to some relief against such party in respect of controversies involved in the proceedings or (ii) no effective decree can be passed in his absence. In the present case none of the two tests are satisfied there is no right of any relief against Defendant Nos.2 and 3 in respect of controversy involved in the proceedings. The right is claimed only against Defendant No. 1, who has allegedly availed the loan. In the present case, effective decree can be passed in absence of Defendant Nos.2 and 3. Thus, Defendant Nos.2 and 3 are not necessary parties to the suit, they are not even proper parties to the suit. The City Civil Court has erred in rejecting the Notice of Motion by referring to email exchange without appreciating the position that the emails are returned by Defendant No.2 in his capacity as director of Defendant No. 1-Company. In my view therefore, the impugned order dated 16 November 2018 is indefensible and liable to be set aside.

22) The Petition accordingly succeeds and I proceed to pass the following order:

- (i) Order dated 16 November 2018 passed by the City Civil Court in Notice of Motion No. 1624 of 2018 is set aside.
- (ii) Notice of Motion No. 1624 of 2018 is made absolute in terms of prayer clause (a) therein.
- (iii) Accordingly, names of Defendant Nos. 2 and 3 are struck out from the array of parties in the suit.
- (iv) The Suit shall continue only against Defendant No. 1.

23) The Petition is **allowed** in above terms. However, considering the facts and circumstances of the present case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]