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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1122 OF 2015
IN
NOTICE OF MOTION NO.1556 OF 2015
IN
S.C. SUIT NO.1235 OF 2015

WITH
CIVIL APPLICATION NO.1394 OF 2015
IN
APPEAL FROM ORDER NO.1122 OF 2015
IN
NOTICE OF MOTION NO.1556 OF 2015
IN
S.C. SUIT NO.1235 OF 2015

Facebook India Online Services Pvt. Ltd.

...Appellant

V/s.

S.J. Health Pvt.Ltd. & Ors.

...Respondents

Mr.Ameya Gokhale with Mr.Umang Singh for the Appellant.

Mr.D.A. Sakhalkar i/b Lex Vidhan for the Respondent No.1.

Mr.Chirag Balsara with Mr.Rajesh Talekar for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 8TH DECEMBER, 2015.

P.C. :-

1. Not on board. Taken on board at the request made by the

learned counsel appearing for the appellant.

2. The appellant has impugned the order passed by the learned trial Judge allowing the notice of motion filed by the respondent no.1.

3. Learned counsel for the appellant states that though an application was filed by the appellant under Order 1 Rule 10 of the Code of Civil Procedure, 1908, for deleting the name of the appellant from the cause title of the plaint on the ground that the appellant was a necessary and/or proper party to the suit, the learned trial Judge has allowed the notice of motion and also granted injunction against the appellant without disposing the said application filed by the appellant under Order 1 Rule 10 of the Code of Civil Procedure. He submits that even otherwise the learned trial Court could not have disposed of the notice of motion without first deciding the preliminary objection of jurisdiction raised by the original defendant no.1.

4. By a separate order passed today by this Court in Appeal From Order No.1171 of 2015, the impugned order passed by the learned trial Judge, which is the subject matter of this appeal has been set aside with a direction to the learned trial Judge to dispose of the said application made by the original defendant no.1 under section 9-A of the Code of Civil Procedure, 1908 within a period of three months from today. The learned trial Judge shall also dispose of

the application made by the original defendant no.8 (appellant herein) under Order 1 Rule 10 of the Code of Civil Procedure before disposing of the notice of motion filed by the original plaintiff.

5. At this stage, learned counsel for the respondent no.1 (original plaintiff) states that he has no objection if the name of the original defendant no.8 is deleted from the cause title of the plaint and also the consequential reliefs claimed by the original plaintiff against the original defendant no.8. He has also no objection if the application filed by the original defendant no.8 under Order 1 Rule 10 of the Code of Civil Procedure is allowed by the trial Court in view of the affidavit in reply filed by the original defendant no.8 before the trial Court. The statement is accepted. He submits that in view of the affidavit in reply filed by the original defendant no.8, he will apply for impleadment of another party mentioned therein, who would be necessary party to the suit. The statement is accepted. In view of the statement made by learned counsel for the respondent no.1, the application filed by the original defendant no.8 under Order 1 Rule 10 of the Code of Civil Procedure is allowed. The name of the original defendant no.8 shall be deleted from the cause title of the plaint and from the prayer clause.

6. The appeal from order is accordingly allowed in the aforesaid terms.

7. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)