

P.C.:

. These two Chamber Summonses have been taken out by original Defendant Nos. 3 and 4 praying for deletion from the array of parties in the suit. The Chamber Summonses are on the footing that these Defendants are neither necessary nor proper parties to the suit. These Defendants are directors of Defendant Nos. 1 and 2, respectively and cannot be sued in their individual capacity.

2. The Plaintiff has filed the present suit on the basis of a contract of agency as between the Plaintiff and Defendant No.1. It is the case of the Plaintiff that, under this contract, Defendant No.1 is bound to pay agency commission to the Plaintiff. It is also the case of the Plaintiff that Defendant No.2, who is the holding Company of Defendant No.1, is also bound by this contract and accordingly liable to pay the agency commission to the Plaintiff. On the basis of these pleadings, reliefs are sought for declaration of the agency agreement between the Plaintiff and Defendant Nos. 1 and/or 2 and also a declaration of the Plaintiff's entitlement to 4% commission in respect of a particular project. In the alternative, it is prayed that the Plaintiff is entitled to specific performance of the agency agreement concluded in the e-mails referred to in the prayer (d) between Plaintiff and Defendant Nos. 1 and 2. Accordingly, agency commission of Euro 396,840 is claimed by the Plaintiff. As may be seen from the averments made in the plaint and the reliefs sought therein, the Plaintiff's case is of a contract of agency between the Plaintiff and Defendant No.1 and/or 2. On the basis of this contract, the Plaintiff is seeking reliefs against Defendant Nos. 1 and 2.

No substantive relief is claimed against Defendant Nos. 3 and 4. The only reason for joinder of Defendant Nos. 3 and 4 to this suit is that Defendant Nos. 3 and 4 are Officers responsible for the day-to-day affairs of the business of Defendant Nos. 1 and 2 and having entered into correspondence as such through letters/emails, these Defendants have entered into a concluded contract of agency with the Plaintiff. The contract so pleaded is a contract between the Plaintiff and Defendant Nos. 1 and 2, which is entered into through the mail/correspondence addressed by Defendant Nos. 3 and 4. Defendant Nos. 1 and 2 have filed their respective written statements. In the written statements the Defendants do not contest the authority of Defendant Nos. 3 and 4 to enter into the correspondence alleged in the plaint on behalf of Defendant Nos. 1 and 2. Dr. Saraf, learned Senior Counsel, who also appears for Defendant Nos. 1 and 2, confirms that Defendant Nos. 1 and 2 do not dispute the authority of Defendant Nos. 3 and 4 to enter into the correspondence referred to in the plaint on behalf of Defendant Nos. 1 and/or 2.

3. In this background, considering the fact that the Plaintiff itself has pleaded a contract as between the Plaintiff and Defendant Nos. 1 and 2 and is seeking a specific performance of that contract or various reliefs to be claimed thereunder, on the basis of correspondence/e-mails addressed by Defendant Nos. 3 and 4, and considering that the authority of Defendant Nos. 3 and 4 to address such correspondence/e-mails is not a subject matter of dispute between the parties, there is no reason for joinder of Defendant Nos. 3 and 4 to the present suit. These Defendants can neither be described as parties who ought to have been

joined as Defendants or whose presence is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

4. The Delhi High Court in the case of **Tristar Consultants vs. Vcustomer Services India Pvt. Ltd.**¹ considered a similar application, albeit under Order 7 Rule 11 of the Code of Civil Procedure, where the defendant director prayed for return of the plaint as against him, holding that it is a settled law that a company is a juristic person and must act through a living human being; Collectively, decisions on behalf of the company are taken by the board of directors of a company; Individual directors of companies though described as agents, trustees or representatives of the company, because they act in a fiduciary capacity vis-a-vis the company, they really owe no fiduciary or contractual duties or any duty of care to third parties with whom they deal on behalf of the company. The Court proceeded to hold that having regard to the provisions of Section 230 of the Indian Contract Act, the directors cannot be bound as agents on behalf of their principal, namely, the company. But that is not even a case pleaded in the present suit. In the present suit, the Plaintiff does not propose to bind Defendant Nos. 3 and 4 to the consequence of a contract as between the Plaintiff and Defendant Nos. 1 and 2. It is not the Plaintiff's case that as agents of Defendant Nos. 1 and 2, Defendant Nos. 3 and 4 are bound and liable to perform the contract or compensate the Plaintiff for any wrong under the contract. In that case, they are certainly neither necessary nor proper parties to the present suit. Merely because the Plaintiff as a *dominus litus* chooses to

¹ AIR 2007 Delhi 157

arraign a party, he cannot be permitted to do so, when the presence of such party is neither necessary nor proper. After all the question of continuance of a particular defendant before the Court has also to be considered by this Court in the light of its power to strike off parties under the very provision, under which the Plaintiff as *dominus litus* has in the first place joined the parties.

5. Learned Counsel for the Plaintiff, however, submits that in para 20 of the plaint, the Plaintiff has averred a conspiracy between Defendant Nos. 1 to 4 to deprive the Plaintiff of its 4% commission towards the agency agreement between the parties, whereas in para 37 of the plaint, the Plaintiff has averred about meetings held in Mumbai with executives of Defendant Nos.1 and 2 for concluding the agency agreement and jurisdiction of this Court on the basis of accrual of a part of the cause of action within its local limits in the light of such meetings. Merely because a conspiracy is somehow alleged, the Plaintiff cannot be permitted to join a party. The claim is after all a money claim based on an agency agreement between the Plaintiff and Defendant Nos. 1 and/or 2. By calling non-payment of this money as a conspiracy the Plaintiff cannot be permitted joinder of a party by characterising him as a conspirator. By a mere drafting device, a party otherwise not necessary or proper cannot be allowed to be joined to a suit. The party himself is not one in whose absence the suit cannot be decided or one whose presence may be necessary to determine all questions in the suit. As for the alleged meetings in Mumbai, in the first place, it is not alleged that Defendant Nos. 3 and 4 were the executives who conducted these meetings on behalf of Defendant Nos. 1 and 2. And even if they had, it

is neither here nor there. After all the meetings would have been conducted by them admittedly as representatives of Defendant Nos. 1 and 2.

6. Thus, there is a clear case for deletion of Defendant Nos. 3 and 4. Both Chamber Summonses are allowed in terms of prayer clauses 1 and 2. The amendment to be carried out within a period of four weeks from today.

(S.C. GUPTE, J.)