

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

%

Judgment reserved on: 03rd November 2015

Judgment delivered on: 23rd November 2015

+ **FAO(OS) 184/2015 & CM Nos.7004/2015 (for condonation of delay), 7005/2015 (stay)**

M/S MICROMAX MEDIA PVT. LTD.

.... Appellant

versus

M/S INGRAM MICRO INDIA PVT LTD & ORS..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Tanmay Mehta with Mr Asit Tewari, Advocates.
For the Respondent : Mr A.B. Pandey, Advocate for respondent No.1.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The appellant/plaintiff has filed the present appeal impugning the order dated 06.02.2015 whereby defendant No.7 has been deleted from the array of parties, on the ground that as no relief has been sought against the defendant No.7, he is not a necessary party.

2. The appellant/plaintiff has filed the present suit seeking a decree in the sum of Rs. 3,50,00,000/- as against the defendant Nos.1 to 6. No relief has been sought against the defendant No.7 in the plaint. It is the

contention of the appellant that the defendant No.7, if not a necessary party, is at least a proper party and has been correctly impleaded in the suit and, as such, the defendant No.7 could not have been deleted from the array of parties.

3. Learned counsel for the appellant has contended that the presence of the defendant No.7 is necessary as the appellant/plaintiff wants to cross-examine the defendant No.7. It is contended that the defendant No.7 has an important role to play in the suit and the transactions between the plaintiff and the defendant Nos.1 to 6 and, as such, the presence of the defendant No.7 is necessary. It is contended that if the defendant No.7 was not continued as a party in the suit, there would be no opportunity to the plaintiff to cross-examine the defendant No.7 with regard to the role played by the defendant No.7 in the transactions between the plaintiff and the defendants Nos.1 to 6.

4. Per contra, the defendant No.7, who is respondent No.1 in the present appeal, has contended that the defendant No.7 is neither a necessary nor a proper party. It is contended that originally the suit was filed impleading the defendant No.7 and the defendant No.8. Both of them had allegedly a common role to play in regard to the transaction between the plaintiff and the defendant Nos.1 to 6. It is contended that in the plaint wherever any role is ascribed to the defendant No.7, the same role is ascribed to defendant No.8 and in every paragraph the words 'defendant No.7 & defendant No.8' is stated together. It is contended that in the plaint the defendant No.7 and

the defendant No.8 have been shown as having complete parity in regard to the entire transaction. It is further submitted that the defendant No.8 has been deleted by the plaintiff on its volition from the array of parties. It is contended that if defendant No.8 is neither a necessary nor a proper party, then the defendant No.7 is also neither a necessary nor a proper party. If the suit can continue in the absence of the defendant No.8, the suit can also continue in the absence of the defendant No.7. It is further contended by the respondent No.1 that he had a claim against the plaintiff and had initiated arbitration proceedings which have resulted in an arbitration award in his favour and the challenge to the award by the Appellant before the High Court of Bombay has failed and the impleadment of defendant No.7 in these proceedings is only to harass him and force him to settle the award which has become final between the plaintiff and the defendant No.7. It is further contended that in case the plaintiff wishes, he can always summon the defendant No.7 as a witness or, in the alternative, the defendant Nos.1 to 6 could always summon the defendant No.7 and he can be then subjected to cross-examination by the plaintiff.

5. In rejoinder to the contentions raised by the respondents, learned counsel for the appellant contends that there was an apprehension that originally the defendant No.8 would file a counter claim against the plaintiff and, as such, the plaintiff settled the disputes with defendant No.8 and, accordingly, deleted the defendant No.8 from the array of parties. With regard to the summoning of the defendant No.7 as a witness, it is

contended that if the plaintiff were to summon the defendant No.7 as a witness, then the plaintiff would not be able to cross-examine him.

6. The principles governing the addition/deletion of a party under Order 1 Rule 10 are well settled. The precondition to add a party to a Suit is (i) the person ought to have been joined; and (ii) the presence of such a party is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The persons who ought to have been joined are necessary parties and the persons whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit are proper parties.

7. Perusal of the plaint shows that in every paragraph wherever there is a reference to the defendant No.7, there is a similar reference of the defendant No.8 which implies that the alleged role of the defendant No.8 was identical to that of the defendant No.7. If the defendant No.8 is neither a necessary nor a proper party and the suit could proceed in absence of the defendant No.8, so the defendant No.7, who is alleged to have an identical role to play as that of defendant No. 8, is also neither a necessary nor a proper party and the suit can very well proceed in the absence of the defendant No.7. It may also be noted that there is no claim made by the plaintiff as against the defendant No.7. The whole claim made is against defendant Nos.1 to 6. The plaintiff is always at liberty to summon the defendant No.7 as a witness or, in the alternative, when the defendant No.7, if at all, is summoned by defendant Nos.1 to 6 as a witness, the plaintiff has the right of cross-

examination. Mere presence of the defendant No.7 as a party does not entitle the plaintiff to cross-examine the defendant No.7. A situation may arise where the defendant No.7 may choose not to appear or defend the proceedings, as no relief is claimed against the said defendant, and in that eventuality if the defendant No.7 is proceeded ex-parte and does not appear as a witness then the plaintiff, in any case, would not have an opportunity to cross-examine the said defendant. Therefore, the plea that the presence of the defendant No.7 is necessary as the plaintiff wishes to cross-examine the said defendant holds no merit. Law does not permit the plaintiff to join a person, whom he wishes to cross-examine as a witness, as a party even though he may be neither a necessary nor a proper party. Further, the fact that defendant No.8 has been deleted from the array of parties by the plaintiff, allegedly as the plaintiff apprehended a claim to be filed by the defendant No.8, shows that defendant No.8 was neither a necessary nor a proper party and was impleaded as a party only in apprehension of the proposed claim. By applying the same analogy, it appears that defendant No.7 has been impleaded only to counter the claim of the defendant No.7. The presence of the defendant No.7 is clearly not necessary to enable the Court to effectively and completely decide the issues that arise in the present proceedings which are between the plaintiff and the defendant Nos. 1 to 6.

8. In view of the above, we find no infirmity in the impugned order, inasmuch as we are also of the view that the defendant No.7 is neither a necessary nor a proper party to the proceedings. We find no merit in the

appeal. The appeal is accordingly dismissed leaving the parties to bear their own costs. The pending applications are also dismissed.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

November 23, 2015
st

