

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.03.2015

+ **FAO(OS) 38/2015 & CM 1329/2015**

KANWAR SINGH SAINI

... Appellant

versus

MOHD YUSUF AND ANR

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Tanmaya Mehta

For the Respondent Nos. 3-4 : Ms Savita Rustogi

For the Respondent No.1 : Mr S. P. Sinha with Mr Rakesh Mishra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment dated 07.11.2014 delivered by a learned Single Judge of this Court in IA 10071/2013 in CS(OS) 3102/2012, which was filed by the appellant/ plaintiff under Order 1 Rule 10 CPC read with Section 151 CPC for impleadment of two persons — Mr Ved Prakash Saini and Mr Mohar Pal Singh— as defendant Nos. 3 and 4.

2. We are not going into the reasons as to why the impleadment was sought. The learned counsel for the appellant has pointed out that the

necessary parameters for considering an application under Order 1 Rule 10 CPC have not at all been considered by the learned Single Judge while rejecting the said application. According to the learned counsel, the two necessary points which need to be considered before a person can be impleaded in or deleted from the array of parties, is whether the person is a necessary or proper party. Admittedly, the learned counsel for the appellant states that the proposed defendant Nos. 3 and 4 are not necessary parties. However, he submits that they are proper parties. This aspect of the matter, as to whether the proposed defendant Nos. 3 and 4 are proper parties or not, has not at all been considered by the learned Single Judge, who has rejected the application merely on the ground of delay. The learned counsel for the appellant has drawn our attention to the decision of a Division Bench of this Court in **Charanjeet Singh Rekhi v. Harish Ahuja and Others: FAO(OS) 202/2013** and other connected matters delivered on 07.07.2014. The relevant extracts of the said decision are as under:-

“28. A plain reading of Order 1 Rule 10(2) of CPC indicates that the Court has wide discretion to strike out the names of the parties which have been improperly joined and implead any person as a party whose presence may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The Supreme Court, in a number of decisions, has interpreted the provisions of Order 1 Rule 10 of

CPC and held that it provides the Court with the necessary discretion to implead any person who is either a necessary or a proper party and whose presence is essential for the effective adjudication of the disputes involved in an action. In ***Thomson Press (India) Ltd. (supra)***, the Supreme Court stated this proposition as under:-

“31. From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.”

29. It is well settled that a necessary party is one in the absence of whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed but its presence is necessary for adjudication of the disputes involved in the suit. The Supreme Court in the case of ***Ramesh Hirachand Kundanmal (supra)*** has explained this in the following words:-

“6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be

exercised in view of all the facts and circumstances of a particular case.”

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“32. We are unable to accept this contention. It is settled law that in order to determine whether a person is a necessary party to an action, one of the tests that is to be applied is whether he should be bound by the result of the action. The Supreme Court in the case of **Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.:** (2012) 8 SCC 384 has referred to various decisions and set down the broad principles which are applied while considering an application for impleadment. The relevant extract of the said judgment is as under:-

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

3. After hearing the counsel for the parties and on going through the impugned judgment, we find that the considerations referred to in the said Division Bench decision, have not been granted by the learned Single Judge. We, therefore, set aside the impugned judgment dated 07.11.2014 and remit the matter to the learned Single Judge for a decision afresh on IA 10071/2013 on the lines indicated in the said Division Bench decision in **Charanjeet Singh Rekhi** (*supra*) upon consideration of the appropriate parameters as to whether the proposed defendant Nos. 3 and 4 are proper parties or not. The issue of ‘necessary party’ need not be gone into inasmuch as the learned counsel has fairly conceded that the proposed defendant

Nos. 3 and 4 would not be necessary parties. The said IA 10071/2013 be listed before the learned Single Judge in the first instance on 09.04.2015.

The appeal is allowed as above.

BADAR DURREZ AHMED, J

MARCH 26, 2015
SR

SANJEEV SACHDEVA, J

