

\$~70

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

% Judgment delivered on: 24.08.2015

+ FAO (OS) 479/2015

HOTEL QUEEN ROAD

.... Appellant

versus

M/S ROYAL TRADERS LTD & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Sudhir Nandrajog, Sr Advocate with Ms Aditi Gupta, Advocates.

For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.16507/2015 (exemption)

Exemption is allowed subject to all just exceptions.

CM No.16506/2015 (for condonation of delay in re-filing the appeal)

The delay in re-filing the appeal is condoned.

The application stands disposed of.

FAO (OS) 479/2015

1. This appeal is directed against the order dated 21.04.2015 passed

by a learned Single Judge of this Court in OA 67/2015. The grievance of the appellant is that the appellant's application under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking impleadment of one Mr R.P. Mittal, has been dismissed by the Joint Registrar and even the appeal therefrom, being OA No. 67/2015, has been rejected by the learned Single Judge by virtue of the impugned order dated 21.04.2015.

2. According to Mr Nandrajog, the learned senior counsel appearing on behalf of the appellant, the said Mr R.P. Mittal ought to have been added as a party in the subject suit. He submitted that although, the said Mr Mittal may not be a necessary party, as the plaintiff does not claim any relief against him, he would certainly be a proper party. He submitted that a proper adjudication of all the issues cannot be done in the absence of Mr R.P. Mittal.

3. It is the case of the appellant that there was collusion between the respondents and the said Mr R.P. Mittal, whereby the monies so advanced by the respondents to the appellant Company were defalcated by Mr R.P. Mittal, being a Director in the appellant Company. He submitted that because of this fraud, the appellant Company has been put to a great loss. In fact, the submission of Mr Nandrajog is that the money, which was

advanced to the appellant Company, was only a devise adopted by Mr R.P. Mittal to later withdraw the amount in his own name. The personality of the appellant Company was only used as a cloak for this transaction. It is in this context that Mr Nandrajog submits that presence of Mr R.P. Mittal as a party would be required for proper and full adjudication of the disputes.

4. The learned Single Judge has examined the matter and has concluded that the appellant is a Company incorporated under the Companies Act, 1956 and has a distinct personality of its own, which is entirely separate from that of its Directors. Mr R.P. Mittal was one of the Directors of the appellant Company and if he had made certain illegal transactions which were against the interest of the appellant Company, the same was an issue between the appellant Company and him in his capacity as a Director with which the plaintiff had no concern. The learned Single Judge was of the view that whether any act of misfeasance was committed by R.P.Mittal in his capacity as a director of the company or not would not, in any manner, affect the subject matter of the present suit which was one for recovery of an amount which had allegedly been paid by the plaintiff to the defendant company through cheques. We are

in agreement with the observations and conclusions arrived at by the learned Single Judge. It is for the plaintiff/respondent to establish its case for claiming recovery of the amounts advanced by it. The claim is against the defendant/appellant Company and in defending that claim the defendant/appellant Company has obviously filed its written statement. The plaintiff will have to establish its case and the *inter se* disputes between the defendant/appellant Company and the said Mr R.P. Mittal would not come in the way of the disputes between the appellant/defendant and the plaintiff/respondent. We are in complete agreement with the conclusion arrived at by the learned Single Judge that the said Mr R.P. Mittal would neither be a necessary nor a proper party in the facts of the present case.

5. The appeal has no merit. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 24, 2015
st