

217.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2735 of 2014

Date of decision:24.02.2016

Avtar Singh

... Petitioner

versus

M/s Haryana Wheel Tyres Private Limited and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjay Jain, Advocate,
for the petitioner.

Mr. Parveen Gupta, Advocate,
for respondent No.7.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. In a suit instituted by the plaintiff against the defendants who included the plaintiff's father as well, the defence taken by the defendants 1 to 5 was that the 6th defendant, who is the father of the plaintiff is really instrumental in bringing about the case and it is a collusive action. The 6th defendant moved an application for deletion of his name and the plaintiff had no objection. Defendants 1 to 5, however, objected to the deletion on the basis of the stand already taken that the suit itself was a collusive action brought

about, engineered by the 6th defendant. The court declined to delete the 6th defendant.

2. The petitioner states that the plaintiff is the master of his action and if he had himself no objection for the deletion of the 6th defendant's name, the court ought not to have heard the objections. It is the further contention that the 6th defendant was not in any way connected with the affairs of the Company and the suit relates to some dispute relating to the Company and, therefore, the 6th defendant's presence is not necessary.

3. I reject both these contentions as not tenable. The power under Order 1 Rule 10 CPC is not necessarily circumscribed by how the plaintiff chooses to frame the suit. It shall be at all times possible for a court to make even a suo motu impleadment of persons whose presence according to the court is necessary. This truly exposes the fallacy of the argument that if the plaintiff did not object to the deletion, the other defendants cannot. If in the same situation hypothetically the suit had been filed by the plaintiff only against the defendants without impleading the father and if the defendants 1 to 5 had moved an application for impleadment of the father as a person who has engineered the suit and that adjudication must be made in the presence of the father, it would be perfectly competent for a court to order such impleadment for a full-fledged adjudication and to examine the case of collusion as pleaded by the defendants. In

such a situation whether the father has any interest as shown in the documents as relating to the affairs of the Company will have no bearing at all. It is the actual degree of involvement as contended by parties and will become relevant for consideration.

4. If the court below has not allowed for deletion on the basis of objections taken by defendants 1 to 5 about the 6th defendant as being instrumental for the proceeding and that it should be heard in his presence, I find no illegality in the order for intervention.

5. The impugned order is sustained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

24.02.2016
sanjeev