

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

**CR No.3918 of 2016(O&M)
Date of decision :01.06.2016**

Arvind Lifestyle Brands Limited

..... Petitioner

Versus

Satyanarain Sharma and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Akshay Bhan, Sr. Advocate
with Mr. Abshishek Sanghi, Advocate
for the petitioner.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 01.03.2016, passed by the learned Civil Judge (Junior Division), Gurgaon, vide which the application moved by the petitioner-defendant to implead M/s Track-On Vogue Pvt. Ltd (for short 'TOPL') as defendant no.3 has been dismissed.

2. Plaintiff-respondent no.1 filed the suit for possession and for recovery of rents/damages against the petitioner-defendant. That proposed defendant entered into

Franchise Agreement with the petitioner on 30.09.2009. Plaintiff-respondent was well aware of the said Franchise Agreement and has consented thereto. He was also aware of the terms and conditions of the Franchise Agreement. The proposed defendant was appointed as franchise of the goods belonging to Arvind Brands and was required to accept consignments of the stocks bearing brand name 'ARROW' despatched by the petitioner and to display the same in the suit property, promote and market the same. The proposed defendant was to bear all the maintenance charges, electricity charges and service charges. That in terms of clause 13 of the Franchise Agreement, the proposed defendant was to indemnify the petitioner against any loss, damage or liability arising as a result of non-observance of any statutory requirement, third party liability of legal dues of any nature. So, the claim of the plaintiff-respondent no.1 with respect to recovery of rent/damages is required to be indemnified by the proposed defendant.

3. I have heard Mr. Akshay Bhan, learned Sr. Advocate with Abhishek Sanghi, Advocate, learned counsel for the petitioner and have meticulously gone through the paper book.

4. Learned counsel for the petitioner contended that as the proposed defendant was to indemnify the petitioner towards any loss/damage, so he will be responsible for

making the payment to the plaintiff-respondent in case the suit filed by him is decreed. He further contended that the petitioner also initiated the arbitration proceedings against the proposed defendant. He further contended that as a result of the order passed by the Arbitrator and efforts made by the petitioner, the actual possession of the suit property was delivered to the plaintiff-respondent.

5. Learned counsel for the petitioner contended that the plaintiff and proposed defendant are in collusion. The suit has been filed only to extract the money unlawfully from the petitioner. The proposed defendant is necessary and proper party to the suit and it is imperative that the proposed defendant is brought on record to adjudicate upon all the issues between the parties. Thus, he contended that the learned trial Court has wrongly dismissed the application.

6. I have duly considered the aforesaid contentions.

7. It is an admitted fact that plaintiff-respondent has leased out the suit property to the petitioner vide lease agreement dated 23.10.2008. It is only thereafter that the petitioner entered into a Franchise Agreement dated 30.09.2009 with the proposed defendant. Admittedly, plaintiff-respondent no.1 is not a party to the Franchise Agreement dated 30.09.2009 and similarly, the proposed defendant is not party to the lease agreement dated 23.10.2008 on the basis of which the plaintiff-respondent has filed the suit. The plaintiff-

respondent has filed the suit for possession as well as for recovery of rent/damages against the petitioner on the basis of the lease agreement dated 23.10.2008. No relief has been claimed in the suit by the plaintiff against the proposed defendant. The terms and conditions of the Franchise Agreement dated 30.09.2009 were settled only between the petitioner-defendant and respondent no.1. As the proposed defendant is not privy to contract (lease agreement dated 30.09.2009) on the basis of which this suit has been filed. So, he cannot be considered to be the necessary or even the proper party to the suit.

8. As per the provisions of Order 1 Rule 10 (2) CPC, the necessary party is a person who ought to have been joined as a party to the suit and who is a necessity to the constitution of the proper suit without whom no relief or order can be passed. The proper party may be a person whose presence would be necessary to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the instant case, the proposed defendant does not fall either in the category of necessary party or the proper party. He was not required to be joined as defendant in the suit as no relief has been claimed against him by the plaintiff-respondent no.1. His presence is also not required to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the

suit as he was not a privy to the contract i.e. the lease agreement between the petitioner and plaintiff-respondent no.1. If the petitioner has the Franchise Agreement with the proposed defendant to indemnify him with respect to the damages, it is between the petitioner and the proposed defendant and said agreement has nothing to do with the rights of the plaintiff-respondent no.1 in the suit.

9. Thus, taking the case from any angle, the proposed defendant is neither the necessary nor the proper party to the present suit.

10. Consequently, the present revision petition having no merits, is hereby dismissed.

01.06.2016

S.khan

(DARSHAN SINGH)
JUDGE