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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 115/2016**

SANJAY RUSTAGI

..... Petitioner

Through Mr. S.K. Mathur, Adv.

Versus

M/S NET SOLUTIONS & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **05.02.2016**

C.M. No.4191/2016 (Exemption)

1 Exemption is allowed subject to all just exceptions.

2 Application disposed of.

CM(M) 115/2016 & C.M. No.4190/2016 (stay)

3 The petitioner is aggrieved by the impugned order dated 06.10.2015 vide which while disposing off issue No. 2, respondent No.2 had been deleted from the array of the parties. Respondent No.2 was one Pankaj Khullar.

4 Issue No. 2 reads herein as under:-

“Whether the plaintiff has no cause of action against defendant No. 2? OPD-2”

5 Present suit is a suit which has been filed for recovery of Rs.5,00,327/- only. It has been filed against the two defendants. The

plaintiff is Sanjay Rastagi. The first defendant is M/s Net Solutions. The second defendant is Pankaj Khullar. The averments in the plaint disclose that the defendant company and Pankaj Khullar had approached the plaintiff in Delhi in November, 2011 to carry out certain works of defendant No.1 at the site of his company at Chandigarh. Defendant No. 2 was the consultant of defendant No.1. Defendant No. 2 had assured the plaintiff that works to be carried at Chandigarh would be made by Sameer Jain failing which he himself will be liable for the said amount. Meetings were held in which defendant No. 2 Pankaj Khullar had participated. Separate e-mails were also sent to Pankaj Khullar/defendant No. 2 and for this purpose attention has been drawn to e-mail dated 18.01.2013 which states that rates for labour had been finalized between the plaintiff and Sameer Jain (of defendant No.1). This e-mail states that defendant No. 2 had affirmed that Sameer Jain is a close acquaintance of defendant No. 2 and that payment will be released positively by Sameer Jain. In this e-mail (denied by Pankaj Khullar at the stage of admn./denial of documents), a reference has been made to another mail dated 24.11.2011 which is an independent mail sent by the plaintiff to defendant No. 1/Sameer Jain. All other mails are exchanges of communication between the plaintiff and Sameer Jain. Who is Sameer Jain and what is his relation with defendant no.1 has not been averred.

6 It was in this context that the Trial Court of the opinion that defendant No. 2 was not a necessary party and was directed to be deleted from the array of parties.

7 This order has been vehemently challenged before this Court. The contention of the learned counsel for the petitioner is that defendant No. 2 had stood as a guarantor and attention has been drawn to Section 126 of the Contract Act; submission being that such a guarantee can even be oral and need not necessarily be in writing. Additional submission being that Pankaj Khullar being in the nature of guarantor/surety, he would also be liable for the payment which is due from defendant No.1.

8 The averments in the plaint disclose that the plaintiff had entered into a contract with defendant No.1. Defendant No. 2 had introduced Sameer Jain to the plaintiff and in terms of the contract, certain works were to be carried out by the plaintiff at the site of defendant No.1. These works did not mature pursuant to which the present suit was filed. The body of the plaint is perused on the submission that defendant No. 2 had introduced the plaintiff to Sameer Jain; there is no other role attributed to defendant No. 2; he was only an introducer of an independent contract which was entered into between the plaintiff and defendant No.1. Who is Sameer Jain is not clear. Averments in the plaint do not in any manner disclose that defendant No. 2 had stood as a guarantor/surety of defendant No.1. The e-mail (dated 18.01.2013 besides the fact that it has been vehemently denied by Pankaj Khullar, even otherwise only substantiates the averments of the plaintiff that it was in the presence of Pankaj Khullar that the independent contract between the plaintiff and defendant No.1 had been entered into. Para 12 of the plaint deals with the cause of action in the suit. An amount of Rs.2 lacs along with

interest was due from defendant No.1. This amount is claimed from defendant No.1. This is a categorical assertion in para 12 in the plaint. Only additional submission being that this contract was entered into in the presence of Pankaj Khullar. The question of defendant No. 2 being liable co-extensively with defendant No.1 would not arise. It can no manner be said that defendant No. 2 stood as a surety/guarantor of the transaction between the plaintiff and defendant No.1. Admittedly all the written documents between the plaintiff and defendant No.1 are independent of defendant No. 2.

9 Submission of the learned counsel for the petitioner that a guarantee can also be oral is a legal submission; Section 126 of the Contract Act does envisage such a situation but the averments in the plaint do not in any manner disclose that defendant No. 2 could be charged for the otherwise independent transaction between the plaintiff and defendant No.1. At best, the presence of defendant No. 2 could be required only as a witness. The Trial Court had rightly noted that even presuming that defendant No. 2 is arrayed as an agent, the agent would not be liable for the acts of his principal. Defendant No.1 is even otherwise a company which is a distinct legal entity; what is the relationship of Sameer Jain with defendant No.1 is also unclear.

10 This petition is an abuse of the process of the Court. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 05, 2016

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