

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

Reserved on: 13.10.2015
Pronounced on: 06.01.2016

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FAO(OS) No.562/2013 &
CM No.19266/2013

THE INDIAN HOTELS COMPANY LTD. Appellant
Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Niraj
Singh, Adv.

Versus

BINU ANAND KHANNA & ORS. Respondents
Through: Mr. Mr. Krishnendu Datta & Ms.
Sanjana Saddy, Advs. for respondent No.1.
Ms. Meghna Mishra, Mr. Rohan Sharma, Mr.
Akhil & Mr. Dheeraj, Advs. for respondents No.2
to 5 & 8.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

S. RAVINDRA BHAT, J.

1. The unsuccessful first defendant in a pending suit (claiming damages) has appealed to this court claiming to be aggrieved by an order of the learned single judge, whereby its application (I.A. No. 3607/2012 under Order I Rule 10 and Order VI Rule 16 of CPC for deletion of another defendant from the array of parties) was rejected.

2. The plaintiff is a former employee of the seventh defendant, (hereafter "Indian Hotels"). The said defendant is owner of, and

manages the Taj group of companies. The defendant no. 8, (Taj Trade and Transport Co. Ltd.- “Taj Trade”), is a wholly owned subsidiary of Indian Hotels. Taj Trade also owns and operates a reputed chain of exclusive variety stores known as “Khazana”. The first six defendants are officials of the seventh and eighth defendants. The first defendant was (at the relevant time) Chairman of the Tata Group; the second defendant (R.K. Krishna) at the relevant time was Managing Director of Kumar Indian Hotels; the third defendant (S. Ramakrishnan) at that time, was Deputy Managing Director of Indian Hotels, of which fourth defendant (A. P. Goel) was Vice President, Finance; the fifth defendant (Smt. Sabina Saxena) was CEO (of Indian Hotels); the sixth defendant (Smt. Namita Jain) was Deputy General Manager at the relevant time of Taj Travels.

3. The plaintiff alleged that her employment with Indian Hotels and Indian Trade was wrongfully and arbitrarily terminated. She joined the Indian Hotels on October 23, 1980, as receptionist on a temporary basis. Thereafter, on July 14, 1981, she was confirmed and designated as Confidential Secretary in the then Managing Director’s office at Taj Mahal Hotel, New Delhi. She claims to have been involved with the offices of the Chairman, Vice-Chairman, Managing Director, as well as associated with the exclusive stores known as “Khazana” “The Collection” owned and operated by Taj Travels. The plaintiff alleges that Indian Hotels was going through a tumultuous time due to several changes in the management structure by the first defendant, who wanted to have his own officers at the helm of the seventh and eighth defendants.

4. The suit alleges that the first three defendants conspired to get rid of various officers of the Indian Hotels and Taj Travels; several officers of those companies were harassed through numerous audits and investigations. The plaintiff alleged that the fifth and sixth defendants were appointed surreptitiously to oust her from her role and standing in the defendants' organization; also the first and sixth defendants were acting in concert to force her to either resign or take up duties which would not interfere with their style of working. Eventually, her services were terminated; she claimed compensation and damages, jointly and severally from the defendants.

5. The application of Indian Hotels was that names of the defendants nos. 1 to 4 and 6 ought to be deleted from the array of parties on the ground as they were neither necessary nor proper parties and that the plaintiff was unable to establish a cause of action against those defendants. All allegations made against them are vague, baseless, unsubstantiated and entirely misconceived, with a view to make them parties in this suit for vexatious purposes. Indian Hotels also contended that all the pleadings made against said first four defendants, and sixth defendant, should also be struck off as unnecessary, scandalous, frivolous, vexatious, prejudicial, embarrassing and an abuse of the process of this Court. It was contended that the dispute was one relating to a *simpliciter* termination of the plaintiff's employment which cannot *ipso facto* give rise to a claim against the Chairman, Managing Director or other senior executives of the two companies involved. It was contended that compelling these individuals to undergo the rigours of a trial was

unnecessary, since no relief was claimed against them. The applicant/defendant (Indian Hotels) also relied on its Affidavit dated March 20, 2003, whereby it unequivocally undertook to bear all liabilities, which may be determined against the said first four defendants and sixth and eighth defendants. The plaintiff's claim, therefore, stood fully secured.

6. In the reply (to Indian Hotels' application) the plaintiff denied the request for deletion and relied on the order dated September 01, 2005, whereby the Court noticed that there were allegations made against each defendant and definite reliefs have been claimed against each of them. The plaintiff submitted that the issue of cause of action is precluded by issue estoppel. She urged that the defendants had earlier moved an application under Order I Rule 10, seeking same reliefs, and which was dismissed as withdrawn by Order dated February 8, 2006.

7. The learned single judge first noticed the order dated September 1, 2005 dismissing I.A. No. 2005/2001 filed by the Indian Hotels under Order VII Rule 11, for rejection of the plaint. It was also noticed, *inter alia*, that subsequently Defendants no. 1 to 4, 6 and 8 filed separate applications (I.A. Nos. 1532-1537/2006 invoking Order I Rule 10) for deletion of their names from the array of parties. *The defendants withdrew these applications on February 8, 2006, when the Court observed that the plea would be reserved – to be agitated during trial (“objection taken in the Application would be open to these Defendants to be taken up during the trial.”)* The applicant/defendant Indian Hotels had separately, preferred an appeal

before the Division Bench (F.A.O. No. 373/2005) aggrieved by the order dated September 01, 2005. During the pendency of the appeal, by order dated February 8, 2006, the other defendants adopted the written statement of the Indian Hotels. On April 16, 2010, the Division Bench observed:

"Accordingly, the Appeal is disposed of with the clarification that since written statements have now been filed by all the defendants in CS (OS) 399/2001, it will be open to the Appellant/Defendant No. 7 to file an Application under any provision other than Order VII Rule 11 of the CPC. If the Appellant is so advised, the Ld. Single Judge would in the ordinary course is expected to decide those applications on merits. There is no order as to Costs. We make it clear that the impugned order shall be conclusive only in respect of all the provisions of Order VII Rule 11 of CPC."

The learned single judge noticed the averments in the written statement of Indian Hotels and the judgment of this Court in *Tristar Consultants v Customer Services India (P) Ltd*¹. In that decision, it was observed that (1) Order I Rule 10 (2) permits the court at any stage to strike out a person improperly joined as a defendant, (2) and that in a suit for recovery of money, only such persons can validly be impleaded as defendants against whom averments are made which on proof would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said persons named as defendants. The court (in the said decision) had also ruled on liability of directors where a corporation or company is sought to be saddled with responsibility for wrongful acts; and had held that “*directors*

¹139 (2007) DLT 688

cannot be treated as acting as agents of the company, in the conventional sense of an agent, vis-a-vis third parties."

8. The learned single judge after noticing the said decision (cited before him) was of the view that the Court had "*put to rest the very same contentions, which have been raised in the instant application*" while dismissing the application (I.A No. 2005/2001) on September 1, 2005, and observing that:

"Now it would be appropriate to look into the merits of the application of the defendants under Order 7 Rule 11 CPC as well as the oral prayer made by learned counsel appearing for the defendant for deletion of names of defendants 1 to 6 and 8 from the array of the parties in the plaint."

The single judge also noted Para 16 of the said previous order:

"Paragraphs 10, 11, 15, 17, 18, 20 and 21 read in conjunction with paras 38, 41, 42 and the prayer clause make a complete and composite cause of action against all the defendants jointly and severally. Whether the plaintiff would succeed in getting a decree against the defendants or not is a matter of trial and the merits of the case ought not to be subject matter of court's discussion at this stage. In all these paragraphs, it has been specifically stated by the plaintiff that it was under the directions of defendant No.1 and with an intention to change the entire higher management of the defendant No.7 that services of the persons were terminated in an arbitrary and mala fide manner. It is also her allegation that she had tried to satisfy

defendant Nos.1 & 2 that her performance was good and she was not in- competent but it was because of some personal reasons known to them that her services were dispensed with in a most arbitrary, illegal and malafide manner. The allegations made in the plaint are stated to be supported with some correspondence between the parties and also that prior and subsequent conduct of her termination of service by these defendants show that this was not a case of simplicitor bonafide termination of her services. Serious allegations have been made against these defendants. May be, they are not correct but that can only be done by the court after a complete trial. If that be so, the plaintiff would run the risk of facing consequences of a malicious prosecution, may be the Court would award costs to the such defendants or pass such order or direction at the end of the trial as the Court may deem fit and proper in the facts and circumstances of the case. At this stage, it certainly cannot be said that the plaint does not disclose any cause of action against these defendants. There are allegations against them. The allegations are in relation to wrongful termination of the plaintiff and definite reliefs have been claimed against all these defendants. The formation of cause of action has to be examined and determined in the facts of each case. It cannot be subjected to any universal rule. Cause of action will constitute of every fact which would be necessary for the plaintiff to prove, if traversed, in order to support her claim before the Court for judgment, but clearly distinct from every piece of evidence which may be necessary to prove each fact. In the present case, the facts averred in the plaint are the ones which on their plain reading disclose a right of the plaintiff to sue the defendants for the relief claimed.....There is no misjoinder of parties demonstrated on the bare reading of the plaint. Consequently, I find no merit in this application and the same is dismissed." (emphasis supplied).

9. The single judge further noticed that the Court had in that order “disregarded the relevance of the Affidavit dated March 20, 2003 filed by the applicant/defendant, undertaking the liabilities of the remaining defendants”. It quoted the previous orders as follows: -

" The orders of the Court dated 28th February, 2001, 20th March, 2003 and the affidavit dated 20th March, 2003 filed by defendant No.7 in the Court are of no consequence or favorable to the applicant/defendant No.7. Merely because the defendant No.7 had stated that it shall bear the liability, if any, that may ultimately be determined against defendants 1 to 6 and 8 and that this is without prejudice to the rights and contentions of the parties to the suit, should per se be sufficient to delete the name of the parties in the suit, is to say the least is an erroneous approach in law. It is a well settled canon of civil jurisprudence that the plaintiff is dominus litus of the suit and is free to choose the defendant against whom she has a cause of action and claim such relief as she desires, provided the same is permissible in law. Obviously for such acts, the plaintiff also renders herself liable for such consequences as may flow in law, upon conclusion of the trial." (emphasis supplied).

10. The single judge therefore was unmoved by the submissions of Indian Hotels, and held that since there was (a) no change of circumstances and (b) the Division Bench had not set aside the material observations in the previous order (of September 01, 2005) there was no cause to accede to the application and delete the other defendants from the array of parties.

11. Mr. Rajiv Nayar, learned senior counsel for Indian Hotels submitted that the learned single judge fell into error in overlooking that the fresh application (by Indian Hotels) for deletion of the other

defendants was a course of action expressly reserved by the Division bench in its appeal against the earlier order dated September 01, 2005. The said order of the Division Bench had noticed the fact that the other defendants' applications were allowed to be withdrawn (on June 08, 2006). Yet, the Division bench confined or limited the observations of the order dated September 01, 2005 to the plea urged, i.e., the rejection of the plaint. In the circumstances, the express reference to applications other than those under Order VII Rule 11 would have included applications for deletion of unnecessary or improper parties. It was argued, besides that given the circumstance that Indian Hotels had undertaken to bear the liability of the other defendants, if found, the plaintiff had really no reason to insist that they ought to be continued in their capacity as defendants. The learned counsel further submitted that all the pleas against the said defendants were not only vague, but meant to embarrass individuals and harass them; as such they were motivated and vexatious. This salient aspect, urged counsel, was lost sight of by the learned single judge. He reiterated the decision of this court in *Tristar Consultants* (supra) to say that a company- on account of separate juristic personality is liable for its acts and that individual responsibility of directors or those in management is alien to civil proceedings.

12. The court first recollects the scope of its interlocutory appellate jurisdiction. This was summarized seminally (and pithily) in *Wander v Antox*², where it was observed that:

"The appeals before the Division Bench were against the

²1990 (1) SCC 727

exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

The above view was endorsed again in *Mohammed Mehtab Khan v Khushunma Ibrahim & Ors*³.

13. Who are necessary and who, merely “proper” parties to a civil action? The Supreme Court in *Udit Narain Singh Malpaharia vs*

³AIR 2013 SC 1099. It was observed that the Appellate Court cannot interfere “with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable.”

*Additional Member, Board of Revenue Bihar*⁴, settled this question quite simply, where it was ruled that:

“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.”

In this case, there is no denial that the plaint does contain averments suggesting a concerted action, or conspiracy between the various defendants (including those on whose behalf Indian Hotels has moved for deletion from the array of parties). The court cannot in the absence of a full trial comment on the strength or weakness of those averments; nor can it dismiss the charges as vague or vexatious, with the definiteness that Indian Hotels’ counsel does. If the law as to pleadings is that every averment, which constitutes a step in outlining the cause of action motivating the litigation is to be taken at face value and evaluated on the basis of materials and evidence adduced during the trial, unless either the action itself is barred, or the plea is so prohibited by some law the Court cannot preclude trial. Such being the case, it is inconceivable for a Court to say that the plaintiff should be precluded from leading evidence which any defendant may have to answer during the trial. That such would undeniably be the case, is undisputed by the appellant, because there is no manner a court of law can conclude that a group of individuals or some of them acted in

⁴ AIR 1963 SC 786; recently referred to and followed in *Poonam v State of UP* 2015 (43) SCD 94.

concert or conspired in some manner, without hearing them or taking their account into consideration. That is quite simply, the *rationale* for rejecting the plea of the appellants. The court is also mindful that (a) besides the liberty given by the Division Bench the appellant has not adverted to any material and (b) the appellant cannot say that any finding or submission on merits as to the truth or correctness of the assertions made individually (which might ultimately lead up to liability that might be borne *solely* by the seventh defendant) against any individual defendant, can be considered in their absence.

14. In view of the above discussion, the Court is satisfied that the appeal lacks merit; it is accordingly dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 06, 2016