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

% *Date of decision:* 30.08.2016

+ CM(M)848/2016

MUSAFIR ESTATES PVT.LTD. ..Petitioner
Through Mr.Nishant Datta, Adv.

Versus

ANKISH MADHAN & ORS. ..Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 11.5.2016 by which the application filed by the respondent No.1/plaintiff under Order 1 Rule 10 CPC was allowed.

2. Respondent No.1 has filed a suit against respondent No.2 for recovery and mandatory injunction. It is the case of respondent No.1 that he is the owner of Porsche 911 which he bought for a total consideration of Rs.1,05,52,000/-. The said car was subsequently sold to respondent No.2 for Rs.80 lacs. As the car was financed by the HDFC Bank, the final sale documents were to be executed after respondent No.2 clears the outstanding amount. Possession of the car was handed over to respondent No.2. The suit was filed claiming a decree against respondent No.2 for Rs.50,49,132/- towards outstanding sale consideration and for a decree of mandatory

injunction directing the defendant to record the transfer of the vehicle in his name on payment of the balance sale consideration.

3. Thereafter the respondent No.1/plaintiff filed an application under Order 1 Rule 10 CPC pointing out that respondent No.2/defendant alongwith the written statement has filed copies of Form No.29 and Form No. 30 which show that respondent No.2 has sold the vehicle through his employer respondent No.3. The vehicle is said to have been sold to the petitioner. Hence, it was prayed that the petitioner be added as a party.

4. The trial court by the impugned order noted that the pleadings and documents filed by the respondent No.2 show that the proposed defendant, namely, the petitioner had purchased the vehicle. The proposed defendant states that he purchased the vehicle from respondent No.3 hence it would be a matter of trial as to how the transaction proceeded between the existing parties and the proposed defendant, namely, the petitioner and respondent No.3 are necessary parties to completely adjudicate upon the matter. Hence, application under Order I Rule 10 was allowed and the petitioner and respondent No.3 were added as a party.

5. I have heard learned counsel for the parties. A perusal of the plaint shows that essentially the relief is for recovery of money from respondent No.2 to whom respondent No.1/plaintiff is said to have sold the car. There is also a relief of mandatory injunction sought to direct respondent No.2 to correct the records of the concerned authorities on payment of the balance sale consideration.

6. Order I Rule 10 (2) CPC reads as follows:-

10. Suit in name of wrong plaintiff.- (1) xxx

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

7. In *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd.*; 2007 SCC 417 the Supreme Court held as follows:-

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be

impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act accordingly to reason and fair play and not according to whims and caprice.”

8. In *Ramesh Hiranand Kundanmal vs. Municipal Corporation of Bombay*; (1992)2SCC524 the Supreme Court held as follows:-

“The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.”

9. Hence, a proper party is a party whose presence would enable the court to completely, effectively and adequately adjudicate on all matters in dispute.

10. In the present case the respondent No.1/defendant is essentially concerned with recovery of his money i.e. balance unpaid consideration for

the car which he sold to respondent No.2. He does not seek physical recovery/possession of the vehicle. In view of the above, the liability would be entirely of respondent No.2 or of respondent No.3 the company in question. At best the petitioner would be a witness to depose as to the nature of transaction.

11. Hence, in my opinion, there is manifest error in the impugned order. Petitioner is neither a necessary nor a proper party. Petition is accordingly allowed and the impugned order is set aside to the extent that petitioner would not be a party to the suit.

12. Petition stands disposed of. All pending applications also stand disposed of.

JAYANT NATH, J.

AUGUST 30, 2016/n
Signed on 22.12.2016.