

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6152 of 2017 (O&M)
Date of Decision: 02.11.2017

Shingora Textiles Ltd.

... Petitioner

Versus

M/s. Mimaki Engineering Company Ltd. and others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S. Sobti, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

The plaintiff is in revision petition against the order passed by the learned trial Court rejecting the plaint qua defendant No.4.

The plaintiff filed a suit and impleaded the following defendants: –

“1. Mr. Vinod Nayyar, Managing Director, Mimaki Pvt. Ltd., 232, Phase IV, Udyog Vihar, Gurgaon, Haryana India.

2. Mr. Sumit, Marketing Head, Mimaki Pvt. Ltd., 232, Phase IV, Udyog Vihar, Gurgaon, Haryana India.

3. M/s. Mimaki Pvt. Ltd., 232, Phase IV, Udyog Vihar, Gurgaon, Haryana India through its Director.

4. M/s. Mimaki Engineering Company Limited, 2182-3, Saigeno-OTSU, TOMI CITY NAGANO, JAPAN.

5. Mr. Akira Ikeda, Chairman.

6. *Mr. Hisayuki Kobayashi, President.*

7. *Mr. Sakae Sagane, Executive Vice President.*

8. *Mr. Masaki Fujita, Senior MD.*

9. *Mr. Nobuyuki Kimvura, Director.*

10. *Mr. Shintaro Imaia, Director.*

*All C/o M/s. Mimaki Engineering Company Limited, 2182-3,
Saigeno-OTSU, TOMI CITY NAGANO, JAPAN.”*

The plaintiff had made the following prayer in the suit: –

“Suit for mandatory injunction directing the defendants to replace the defective printing machine for inkjet textile processing unit being marketed under the name and style of TX400-180-B Inkjet printer or in the alternative to refund the amount in invoice;

AND

A suit for recovery of damages caused by financial loss, production loss, loss of business opportunity, mental agony and loss of reputation, to be assessed by this Hon'ble Court for the defective machine supplied by the defendants on the basis of oral and documentary evidence.”

The only allegation against defendant No.4 is in para 3 of the plaint, which is extracted as under: –

“3. That the defendant No.2 being the marketing head of the defendant No.3 and claiming himself to be the authorized person of the defendant No.4, approached the plaintiff

company for selling its inkjet printing machine for textile processing unit, which was being marketed under the name and style of TX400-180-B Inkjet printer and while marketing the said machine the defendant No.2 promised the stars. Needless to say that the performance of the machine did not come close to the false promises. Under the false promise and impression given by the defendant No.3, the plaintiff was induced to purchase the said machine vide invoice No.MJIPL/10-11/1276 dated 31.01.2011 for a value of Rs.61,00,000/- (Rupees Sixty one lacs only). Copy of the said invoice is attached herewith for the kind perusal of this Hon'ble Court.”

Defendant No.4, which is a Japan based company filed an application for rejection of the plaint qua it. Learned trial Court after considering the pleadings made in the plaint and the relief sought in the suit, allowed the application. That is how the plaintiff is in revision petition.

Learned counsel for the petitioner has vehemently argued that the plaint could not be rejected in part. He has further submitted that at the time of decision on the application under Order 7 Rule 11 CPC, the Court is required only to examine the assertions made in the plaint.

I have considered the submission of the learned counsel for the petitioner.

The Court is well within its power to strike off the name of a defendant, if the Court finds that such party is wholly unnecessary. Under

Order 1 Rule 10 CPC, the Court has the power to strike off or add parties. In this case, rejection of the plaint is in fact a wrong argument. The plaint as such has not been rejected. Only name of defendant No.4 has been struck off.

However, this is not a case where plaint has been rejected. Learned trial Court has used wrong words. In fact, the suit is still pending before the Court. Only name of defendant No.4 has been struck off.

It is not in dispute that defendant No.3 is a party defendant in the suit. Defendant No.3 has filed its written statement and is continuing to contest the suit. Entire dealings of the plaintiff were with defendants No.1 to 3.

There is no assertion that defendant No.1 or its representative ever had any dealings with the plaintiff.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the order passed by the learned Civil Judge (Jr. Division), Ludhiana dated 17.05.2017.

The revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

02.11.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No