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

\+ CM(M) No.778/2017, CM No.26254/2017 (for stay) and CM No.26256/2017 (under Section 151 CPC for calling of record).

KANWARJIT SINGH CHAWLA & ANR ..... Petitioners

Through: Mr. N. Dutta and Mr. Angad Mehta, Advs.

versus

D K CONTRACTORS & ANR ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **26.07.2017**

<u>CM No.26255/2017 (for exemption).</u>

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

<u>CM(M) No.778/2017, CM No.26254/2017 (for stay) and CM No.26256/2017 (under Section 151 CPC for calling of record).</u>

3. This petition under Article 227 of the Constitution of India impugns the order (dated 8th May, 2017 in CS No.13750/16 filed by the respondent no.1 / plaintiff against the two petitioners Kanwar Jeet Singh Chawla and Chandan Pal Singh Chawla and the respondent no.2 Chawla Techno Construction Limited (Company) for recovery of Rs.33,91,805/- with interest) dismissing the application of the petitioners / defendants under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for deletion from the array of defendants in the suit.

4. The petitioners / defendants sought their deletion from the array of defendants contending that the respondent no.2 / defendant Company, with whom the respondent no.1 / plaintiff had a privity of contract, being a legal

entity and a corporation sole capable of being sued in its name, the impleadment in the suit of the petitioners for the reasons of being the Managing Director and Director of the respondent no.2 Company was bad.

5. The learned Additional District Judge, vide the impugned order, has dismissed the application reasoning that the petitioners / defendants in response to the legal notice preceding the suit, wherein the respondent no.1 / plaintiff had claimed the monies also from the petitioners / defendants, had admitted the approach of the respondent no.1 / plaintiff as correct and thus could not be deleted.

6. The case of the respondent no.1 / plaintiff in para 3 of the plaint is of the petitioners / defendants though on behalf of the respondent no.2 / defendant Company having approached the respondent no.1 / plaintiff for the transactions subject matter of the suit and having made various representations to the respondent no.1 / plaintiff. Thereafter, paras 8 and 10 of the plaint are as under:-

> *"8. That the defendants have dishonestly, falsely and malafidely shown to the concerned Tax Department that they have allegedly made a payment of Rs.54,44,468/- to the plaintiff firm and the defendants also paid on the said payment a TDS amount of Rs.54,445/- to the concerned Tax Department. It is submitted herein that the defendants have only made a total payment of Rs.43,73,120/- as mentioned above and nothing else and a sum of Rs.25,12,448/- is legally due and recoverable from the defendants to the plaintiff firm. Copies of the TDS Form No.26AS, Form No.16A and internet generated TDS details are annexed herewith as* ***ANNEXURE-P-4 (COLLY)****.*

> 10. *That thereafter, the plaintiff had received a notice having Ref. No.DL-I/ST/R-II/Enquiry/CTCL/56/2013 dated 12.08.2013 from the office of the Assistant Commissioner of Service Tax, Division-I, 37, Nehru Place, New Delhi – 110 019 whereby the Superintendent, Rang-II had directed the plaintiff firm to make the payment of service tax amount to the department in respect of the abovesaid work done by the plaintiff to the defendants. Copy of notice dated Nov. 2013 is annexed herewith as* ***ANNEXURE-P-5****."*

7. I have at the outset enquired from the counsel for the petitioners / defendants, whether the respondent no.2 / defendant Company has any assets from which the money decree if any can be satisfied. This question has become relevant / important because it is found that the shell / identity of a Company, and which is nothing but an alterego for its Directors, is more and more being used to carry on business, to take debts and to deprive the creditors of recovery of the money.

8. The counsel for the petitioners / defendants states that he is the counsel for the petitioners / defendants only and is not the counsel for the respondent no.2 / defendant Company and is thus not concerned with the assets of the respondent no.2 / defendant Company.

9. However on enquiry whether the petitioners / defendants are still the Managing Director and Director of the respondent no.2 / defendant Company, it is stated that they are, but since the petition is filed by them, they are not required to know of the assets of the respondent no.2 / defendant Company.

10. While this order is being dictated, the counsel for the petitioners / defendants states that there are sufficient assets in the respondent no.2 /

defendant Company.

11. I have further enquired from the counsel for the petitioners / defendants, as to why in the face of averments in the plaint of dishonesty, *mala fides* and making of false representation to the Taxation Authorities and which can only be by humans and not by a legal entity, the petitioners / defendants are not a necessary party and whether not in the event of the respondent no.1 / plaintiff proving the said averments in the plaint, the respondent no.1 / plaintiff will become entitled to a decree besides, against the respondent no.2 / defendant Company, also against the petitioners / defendants.

12. The counsel for the petitioners / defendants has drawn attention to paras 2 and 3 of the plaint as under:-

> *"2. That the defendant no.1 is a limited company and the defendant no.2 is the Managing Director and the defendant no.3 is the Director of the defendant No.1, who are incharge and responsible for all day to day business affairs and accounts of the defendant No.1.*
>
> *3. That in the month of February, 2010 the defendant No.2 and 3, on behalf of the defendant No.1, contacted the plaintiff firm at Punjabi Bhawan, ITO, New Delhi for the work of POP, false ceiling, punning, molding work at the celebration mall situated at Nathanwara Road, Opposite Devendra Dham, Bhuwana, Udaipur (Rajasthan)."*

13. However that does not answer the query raised. The plaint has to be read as a whole and on a reading thereof it is felt that there are sufficient averments therein disclosing a cause of action for recovery of monies if any

found due, besides from the respondent no.2 / defendant Company, also from the petitioners / defendants.

14. No interference in exercise of jurisdiction under Article 227 of the Constitution of India, which in any case is only on finding any illegality in the order, is required.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017
'pp'..