

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1123 of 2018**

Binay Kumar son of late Chandradeo Singh, Flat No. 402, Pawn Pradeep Apartment, Khetan Lane West Boring Canal Road, P.S.- S.K. Puri, District- Patna Appellant

Versus

1. M/s Kumar Auto Infra Private Limited having registered office at First Floor, Pankaj Market, Gudari Road, P.O.- Hajipur, P.S.- Hajipur, District- Vaishali through Pankaj Kumar Rai

2. M/s Gayetri Engicon Private Limited having registered office at Flat No. 402, Hari Apartment Mohalla East Patel Nagar, Road o. 10, P.S.- Patel Nagar, District- Patna Director through its partner Munilal Yadav

3. M/s GAYETRI KUMARENGICON a partnership firm having address at 501, Sri Hari Apartment, Road No. 10, Patel Nagar, 23, District- Patna through defendant no. 1 and 2

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Kumar

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 03-12-2018 Heard learned counsel for the petitioner as well as learned counsel representing the defendant no. 1 in the court below. Though served, defendant nos. 2 and 3 have not registered there appearance in this proceeding. Although in this Court defendant no. 2 and 3 have not appeared but Mr. Sanjeev Kumar, learned counsel representing defendant no. 2 in the court below submits that he is since representing defendant no. 2 there, the same may be taken as a notice to defendant no. 2 as well. Defendant no. 3 is a partnership firm of which defendant nos. 1 & 2 are partners.



A very limited issue has been raised in the present application. It appears that pursuant to an amendment allowed by the learned court below wherein the place of station where defendant no. 3 is having its office has been allowed to be added, the learned court below took a view that a fresh notice needs to go to respondent no. 3.

In our considered opinion, since Mr. Sanjeev Kumar, learned counsel is representing the defendant no. 1 and 2 as well in the court below and according to the present petitioner they are the only two partners of defendant no. 3, keeping in mind that the partnership firm is always known by its partners, there was no need for the learned court below to direct fresh service of summons on defendant no. 3. Even at this stage, Mr. Sanjeev Kumar, learned counsel representing the defendant nos. 1 and 2 in the court below fairly submits that he would be representing defendant no. 3 as well in the court below.

In the aforesaid view of the matter, the impugned order to the extent it directs issuance of fresh notice to defendant no. 3 is set aside. Let the suit proceed in accordance with law expeditiously.

The issue as to maintainability of Civil Miscellaneous case against the order passed by the learned Commercial Court



in interlocutory matters is left open for discussion in appropriate proceedings.

This Civil Miscellaneous application stands disposed of, accordingly.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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