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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 149/2018 & CM APPL. 29731-29732/2018
ATUL SHARMA Petitioner
Through Petitioner in person.

versus

VIMLA SHARMA Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **27.07.2018**

CM APPL. 29731/2018

Exemption allowed subject to all just exceptions.

The application is disposed of.

C.R.P. 149/2018 & CM APPL. 29732/2018

Vide the present petition, the petitioner assails the impugned order dated 26.04.2018 of the Court of learned ADJ-08, Central, Tis Hazari Courts, Delhi in Suit No. 9836/16 vide which the application under Order 1 Rule 1 r.w.s. 151 of the CPC filed on behalf of the defendants *inter alia* i.e. on behalf of the petitioner herein arrayed as defendant no. 3 to the said suit seeking to implead Ram Chander Sharma spouse of the plaintiff of the Suit No. 9836/16 as a necessary and proper party to the said suit was declined.

Submissions have been made by the petitioner placing *inter alia* reliance on the verdict of the Hon'ble Apex Court in ***Baluram Vs. P. Chellathangam & Ors. in Civil Appeal Nos. 10940-10941 of 2014 dated C.R.P. 149/2018***

10.12.2014 and on the verdict of this Court in ***Tristar Consultants Vs. M/s. Vcustomer Services India Pvt. Ltd. & Anr. C.R.P. No. 365/2006 decided on 05.03.2017*** submitting to the effect that despite the factum that the plaintiff of the Suit No. 9836/16 did not array on record Ram Chander Sharma spouse of the plaintiff as defendant to the suit, nevertheless he being a necessary and proper party to the suit, which is a suit filed by the plaintiff thereof seeking recovery of Rs.14,99,740/- and for permanent injunction and mandatory injunction, ought to have been allowed by the Trial Court.

Copy of the plaint placed on record to the said civil suit indicates that as per the plaint, there were defendants no. 1 to 5 arrayed of whom the present applicant / petitioner is arrayed as the defendant no. 3. The defendants are indicated to be the relatives of the spouse of the plaintiff of the suit pending before the Trial Court.

The prayers made in the said suit are to the effect : -

“It is, therefore, most respectfully prayed that present suit for a sum of Rs.14,99,740/- (Fourteen lacs ninety nine thousand seven hundred forty only) may very kindly be decreed with costs in favour of the plaintiff and against the defendants or in the event of defendant restoring the machines or typewriter to the plaintiff the value of the same be allowed be decreed from the decretal amount. Pendente-lite interest and future interest at the rate of 18% p.a. may kindly be awarded to the plaintiff till the date of realisation.

It is further prayed that a decree for mandatory injunction may also be passed against the defendants, directing them to

restore the electric meter No. LN 503-1228040 in the shop of the plaintiff. It is also prayed that a decree for permanent injunction may also be granted in favour of plaintiff and against the defendants restraining the defendants from transferring or creating in any other manner third party interest in the colour lab machines in machines no. 1201V/450L of the plaintiff or from using or reducing the price of the machines in any other manner.

Any other further order or relief may also be granted in favour of the plaintiff and against the defendants which this Hon'ble Court may deem just fit and proper in the peculiar circumstances of the case.

vide which the plaintiff of the said suit apart from seeking a decree of Rs.14,99,740/- with costs in favour of the plaintiff and against the defendants, has also sought that in the event of the same not being paid the machines or typewriter be restored and has sought an injunction against the defendants seeking a restoration of the electric meter and the shop of the plaintiff apart from a restraint from transferring or creating in any other manner third party interest in the color lab machines of the plaintiff or from using or reducing the price of the machines in any other manner.

It has been submitted by the petitioner, present in person, that during the testimony of the petitioner in the course of the proceedings in FIR No. 150/06, there are substantial assertions made by the plaintiff of the said suit against her spouse, which would have a bearing in the present litigation

and thus the spouse of the plaintiff ought to be arrayed as a party to the suit.

Vide the impugned order the Trial Court has categorically placed reliance on the verdict of the Hon'ble Apex Court in *Mumbai International Airport P. Ltd. vs. Regency Convention Centre & Hotels P. Ltd. and others*, AIR 2010 SC 3109, with specific reference to the observations the effect that : -

“The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff”

In *Mumbai International Airport P. Ltd.* (supra) the Hon'ble Supreme Court further held as follows : -

“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 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 disputes 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 proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff.

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff”

interalia, observing to the effect that the spouse of the petitioner ought not to be impleaded against the wishes of the plaintiff merely because she took a stand in criminal proceeding against her spouse.

On a perusal of the averments made in the plaint and on a consideration also on a perusal of the testimony of the plaintiff in the FIR in question as it relates to different actions that the plaintiff of the said suit seeks against her spouse, she cannot be compelled to seek the civil relief in relation to the Suit No. 9836/16 and thus the spouse of the plaintiff is neither a necessary nor proper party in the said suit.

The petition and its accompanying applications are declined.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 27, 2018/MK