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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 233/2019 & CAV 127/2019 & CM APPL. 6402-6403/2019
DRAEGERWERK AKTIENGESELLSCHAFT MOISLINGER
ALLEE Petitioner

Through Mr. Niki Kantawala, Ms. Shweta
Bharti, Mr. J.K. Choudhary, Ms.
Katyani Mahendru, Ms. Akanksha
Jain, Advs.

versus

ION BIO MED ICARE PVT LTD & ANR Respondent
Through Mr. Samrat Nigam, Mr. Shaurya
Kothalia, Advs.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **11.02.2019**

CAV 127/2019

Since the learned counsel for the caveator has been heard. The Caveat stands discharged.

CM APPL. 6403/2019

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM(M) 233/2019 & CM APPL. 6402/2019

Vide the present petition, the petitioner assails the operation of the impugned order to the extent :-

“So far as prayer for summoning the Company Secretaries of

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Draeger India Pvt. Ltd. and H.L. Medical Systems Pvt. Ltd. listed at serial no. 16 of the application are concerned, I am inclined to allow the same for just and proper adjudication of the suit on merits. Accordingly, Company Secretaries of said companies may be summoned alongwith all relevant records in order to bring on record the books of accounts of sales of Draeger India Pvt. Ltd. and H.L. Medical Systems Pvt. Ltd. Both applications are disposed of accordingly.”

vide which the prayer made vide the application under Order XVI Rule 3 r/w Section 151 of the CPC filed on behalf of the plaintiff was partly allowed vide which the Company Secretaries of M/s. Dreager Medical India Pvt. Ltd. and M/s. H.L. Medical Ltd., of whom M/s. Dreager Medical India Pvt. Ltd. arrayed as the defendant no. 3 to the said suit though M/s. H.L. Medical Ltd. is not party to the said suit, was partly allowed with it having been observed by the learned Trial Court to the effect that the summoning of the Company Secretaries of M/s. Dreager Medical India Pvt. Ltd. and M/s. H.L. Medical Ltd. was allowed for just proper adjudication of the suit on merits and the Company Secretaries of the said companies were directed to be summoned alongwith all relevant records to bring on record the books of accounts of sales of M/s. Dreager Medical India Pvt. Ltd. and M/s. H.L. Medical Ltd.

It has been submitted on behalf of the petitioner herein, arrayed as the defendant no. 3 to the said suit that one of the prayers in the plaint made by the plaintiff i.e. the respondent herein i.e. prayer clause-2 reads to the

effect:-

“ii. Pass a decree of rendition of accounts, directing the Defendant to render accounts of all sales made by it or by its Group/Subsidiary Companies directly or indirectly in India and a decree for payment of 20% commission on all such sales along with interest @13% per annum”

and thus it has been submitted that the prayer clause requires passing of a decree of rendition of accounts and the directions to the defendant i.e. the defendant no. 3 *inter alia* the present petitioner to render accounts of all sales made by it or by its Group/Subsidiary Companies directly or indirectly in India and a decree for payment of 20% commission on all such sales alongwith interest @13% per annum.

It has also been submitted on behalf of the petitioner that vide the affidavit of the witness Mr. A.S. Rajput as PW-1/2 in the said suit vide paragraph-37, it has been stated by the petitioner to the effect : -

37. The turnover of draeger Group Companies is : -

<i>Name of the Company</i>	<i>for the year ended</i>	<i>turnover (Rs. In Crores)</i>
<i>HL MEDICAL</i>	<i>31-03-2005</i>	<i>7.36</i>
<i>SYSTEMS LTD.</i>	<i>31-03-2006</i>	<i>25.20</i>
	<i>31-03-2007</i>	<i>29.65</i>
	<i>31-03-2008</i>	<i>39.70(Extrapolated)</i>
<i>DRAEGER</i>	<i>31-03-2007</i>	<i>05.97</i>
<i>MEDICAL</i>	<i>31-03-2008</i>	<i>08.00(Extrapolated)</i>
<i>(INDIA) LTD.</i>		
	<i>TOTAL</i>	<i>115.88</i>

in which the plaintiff has put forth the turn over of the defendant no. 3 i.e. the present petitioner and also of M/s. H.L. Medical Ltd. and thus the prayer made by the defendant granted by the learned Trial Court vide the impugned order vide which the Company Secretaries of the said two companies were directed to be summoned alongwith all relevant records to bring on record the books of accounts of sales of M/s. Dreager Medical India Pvt. Ltd. and M/s. H.L. Medical Ltd. has been granted, ought not to be granted.

It has been submitted on behalf of the respondent to the present petition i.e. the plaintiff of the said suit that there is no other mode in which the plaintiff can bring the submissions that have been made through paragraph-37 of the affidavit of Mr. A.S. Rajput.

It is apparent in view of the said applications and also taking into account the submissions made in paragraph-37 of the affidavit of Mr. A.S. Rajput that there is no infirmity in the impugned order dated 11.01.2019 vide which the Company Secretaries of the said companies were directed to be summoned alongwith all relevant records to bring on record the books of accounts of sales of M/s. Dreager Medical India Pvt. Ltd. and M/s. H.L. Medical Ltd. and to exercise jurisdiction in terms of Article 227 of the Constitution of India.

Submissions have now further been made on behalf of the petitioner that the application has been allowed despite a period of 10 years delay. It is essential to observe that vide the impugned order the petitioner has been declined to summon several other witnesses and it has been considered appropriate to allow these two witnesses to appear with the requisitioned

record as necessary for the just adjudication of the suit. In view thereof, it is not considered appropriate to interfere in the impugned order.

A submission is also now made on behalf of the petitioner that the adversaries ought not be called into the witness box. It cannot be overlooked that under Order 11 of the CPC interrogatories can always be served on the adversary and in terms of Order 11 Rule 22 of the CPC which provides to the effect : -

“22. Using answers to interrogatories at trial.- Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always that in such case the court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.”

even the answers given by adversaries can be considered by a Court thus, it is not considered appropriate to permit the prayer made by the petitioner herein as it would be essential for the just adjudication of the suit as already observed hereinabove.

The petition is declined.

ANU MALHOTRA, J

FEBRUARY 11, 2019/MK
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