

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

% **Date of decision: 13th September, 2019**

+ **CS(COMM) 204/2019**

CYPRESS FINCAP PRIVATE LIMITED **Plaintiff**

Through: Mr. Tarkeshwar Nath with Mr.
Mahavir Rawat & Mr. Rohit Prasad,
Advs.

versus

**VYOGISWAMI FINANCIAL CONSULTANTS LIMITED &
ORS.** **Defendants**

Through: Mr. Sharad Chandra Jha & Mr.
B.K.Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit, under Order XXXVII of the CPC, for recovery of Rs.2,55,00,000/- jointly and severally from the four defendants namely (i) M/s. Vyogiswami Financial Consultants Limited; (ii) Mr. Tursha P. Hirpara; (iii) Mr. Nilesh Panchal *alias* Nilesh Kumar Narayanbhai Panchal; and, (iv) Mr. Hardik Nimesh Kumar Shah.
2. The suit came up first before the Joint Registrar on 1st May, 2019, when the Joint Registrar, without satisfying himself as to the maintainability of the suit under Order XXXVII, ordered issuance of summons for appearance for 4th July, 2019.
3. The order dated 4th July, 2019 records that while the defendant no.2 had been served, the defendants no.1, 3 and 4 were unserved; however the counsel for all the four defendants appeared and filed memo of appearance and stated that the defendants would enter appearance as per law. The Joint Registrar accordingly ordered this suit to be listed before this Court

today.

4. The defendants, instead of filing appearance, have on 22nd July, 2019 filed a written statement.

5. The counsel for the plaintiff states that since the defendants have not entered appearance, a decree be passed in favour of plaintiff and jointly and severally against the defendants.

6. However, in my view, the appearance of the counsel on 4th July, 2019, notwithstanding the summons for appearance having not been served, amounts to entering appearance

7. Even otherwise, on enquiry it is informed that the suit under Order XXXVII of the CPC has been instituted on the basis of 11 cheques of the total value of Rs.2,60,00,000/- drawn by defendant no.1 company in favour of the plaintiff.

8. I have enquired from the counsel for the plaintiff, how the suit under Order XXXVII of the CPC lies against defendants no. 2 to 4.

9. The counsel for the plaintiff states that the defendants no. 2 to 4 are Directors of the defendant no.1 and the suit for recovery of money against the defendant no.1 company cannot lie without impleading its Directors.

10. On being asked to show law to the said effect, the counsel seeks adjournment.

11. A company, as the defendant no.1 is, is a juristic entity, capable of suing and being sued in own name and for instituting a suit against the company, it is not necessary to also sue/implead its directors. Thus, though dishonour of a cheque drawn by defendant no.1 furnishes a cause of action

for suing defendant no.1 company under Order XXXVII of the CPC but does not furnish a cause of action for suing its directors under Order XXXVII of the CPC. The shareholders and directors of a company are separate and distinct legal entity from the company.

12. The plaint is not found to satisfy the requirement of Order XXXVII Rule 2 (1)(b) of the CPC, of no relief not falling within the ambit thereof being claimed in the suit. The relief claimed of recovery, besides from defendant no.1 who has issued the cheques, also from the defendants no. 2 to 4 is clearly outside the ambit of Order XXXVII of the CPC. The plaintiff, to be entitled to a decree, besides against the defendant no.1, also against the defendants no. 2 to 4, is required to make out a case for piercing of corporate veil and which case is outside the ambit of Order XXXVII.

13. The Joint Registrar ought to have considered the said aspect before mechanically entertaining the suit under Order XXXVII.

14. The counsel for the plaintiff, save for seeking adjournment, has no other argument.

15. The suit is thus ordered to be treated as an ordinary suit.

16. I have next perused the written statement of the defendants to gauge the defence raised therein and find the defendants to have not specifically denied receipt of Rs.2,60,00,000/- from the plaintiff as pleaded in the plaint and/or issuance of the dishonoured cheques in repayment thereof. I have thus enquired from the counsel for the defendants, what issues are to be struck in the suit.

17. The counsel for the defendants also states that the defence is only

qua the liability of the defendants no. 2 to 4 from whom also the monies are claimed and there is no defence as far as defendant no.1 company is concerned, save of territorial jurisdiction of this Court since the defendants are located at Gujarat.

18. The cheques issued by the defendant no.1 are found to be payable at all branches of Allahabad Bank and are found to have been deposited by the plaintiff in the bank at Noida. However, the plaintiff in the plaint has given the address of its registered office of Delhi and which has not been denied in the written statement. This Court would thus have territorial jurisdiction on the principle of debtor must seek the creditor.

19. I have next perused the plaint to find out the plea, if any, of the plaintiff for recovery of the money, besides from defendant no. 1 in whose account the money is claimed to have been paid and who in repayment thereof is claimed to have issued the cheques, from the defendants no.2 to 4 as directors of defendant no.1.

20. No such plea is found.

21. The counsel for the plaintiff also, on enquiry states that no plea for piercing the corporate veil of the defendant no. 1 has been taken in the plaint.

22. The plaintiff is thus found entitled to a summary judgment under Order XI of the CPC as applicable to commercial suits, only against the defendant no.1.

23. A decree is accordingly passed, in favour of the plaintiff and against the defendant no.1 namely M/s. Vyogiswami Financial Consultants

Limited, of recovery of Rs.2,55,00,000/- with interest at 10% per annum from the date of institution of the suit till realization.

24. The plaintiff shall also be entitled to costs of the suit limited to the Court fees paid on the plaint and a sum of Rs.10,000/- towards miscellaneous expenses.

Decree sheet be drawn up.

SEPTEMBER 13, 2019
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RAJIV SAHAI ENDLAW, J