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

Decided on: 2nd August, 2019

+ CM(M) 1066/2018 & CM APPL. 36566/2018

GURMEET SATWANT SINGH & ORS

..... Petitioners

Through: Mr. Kunal Anand, Advocate with
Mr.V.K. Singh, AR for Petitioners.

versus

MEERA GUPTA & ANR.

..... Respondents

Through: Mr. Anil Kr. Gupta, Mr. Pushit
Gupta, Mr. Sanjay Rathi &
Mr.Prateek Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The present petition under Article 227 of the Constitution of India is directed against an order dated 09.08.2018 passed by the Additional District Judge-02 [West], Tis Hazari Courts, Delhi in CS-119/2017 (New No.699/2017), whereby the Trial Court has dismissed the application of the petitioners herein [defendant nos. 2 to 4 in the suit] for deletion of their names from the array of parties in the suit.

2. The plaintiff/respondent filed a suit for recovery of sum of ₹37,49,000/-, wherein four parties were arrayed as defendants. Defendant no. 1 is M/s. Gurind Systems Pvt. Ltd., a company incorporated under the relevant provision of the Companies Act, 1956, and defendant nos. 2 to 4 are stated to be the directors of the said company.

3. The cause of action pleaded in the suit is that the “defendants” used to place orders for supply of material from the plaintiff and were liable for making payment against the invoices issued by the plaintiff in respect of those supplies. The plaintiff/respondent annexed with the plaint copies of various bills/ invoices. It was further alleged that the “defendants” had issued 7 cheques in favour of the plaintiff/respondent out of which four cheques were dishonoured. According to the plaintiff/respondent, the remaining three cheques were not presented, at the instance of the defendants. The plaintiff claims that the sum of ₹35,39,820/- is outstanding in terms of a running account, alongwith interest thereupon, as well as the value of C-forms. The further averment of the plaintiff/respondent is that she has come to know from reliable sources that, with a view to evade payment of their liability to her, the defendants/petitioners are selling their factory located in Himachal Pradesh.

4. The suit having been filed under Order XXXVII of the Code of Civil Procedure, 1908 (hereinafter, “the CPC”), the Trial Court, by an order dated 12.02.2018, has granted conditional leave to defendant against which CM(M) 287/2018 has been filed by the respondent no.2 herein, which is pending before this Court. This Court has passed an *interim order* in that petition staying the condition imposed by the Trial Court and, the suit is thus proceeding for trial.

5. In the meantime, the application under consideration was filed by the defendant nos. 2 to 4 on the ground that, as directors of the defendant no. 1 company, they do not have any personal liability to the plaintiff in respect of the transactions and are thus neither necessary nor proper parties to the suit.

6. By the impugned order, the Trial Court has dismissed the said application, noting the submission of the plaintiff that the plaintiff has made allegations of cheating and fraud against the defendants and has also filed a criminal complaint against them. The Trial Court based its reasoning upon paragraphs 2, 4 and 12 of the plaint, and distinguished the judgment of this Court in *Mukesh Hans & Anr. vs. Smt. Uma Bhasin & Ors* [RFA 14/2010 decided on 16.08.2010] cited by the defendant nos. 2 to 4. The relevant observations of the Trial Court in the impugned order dated 09.08.2018, are as follows:-

“8. I have heard Sh. Asit Tiwari, Ld. Counsel for the plaintiff and Sh.Saurav Sharma, Ld. Counsel for the defendants and perused the record. Ld. Counsel for defendants has relied upon Judgment of the Hon'ble High Court in case titled Mukesh Hans & Anr. Vs. Smt. Uma Bhasin & Ors - RFA No. 14/2010 decided on 16.08.2010.

9. Ld. Counsel for the defendants No. 2 to 4 submitted that in the plaint there is no single averment against the Directors - defendants No. 2 to 4. Therefore, they may be deleted from the array of parties as per law. The defendant company is a separate legal entity and no decree can be enforced against its Directors.

10. On the other hand Ld. Counsel for the plaintiff submitted that defendants No. 2 to 4 are necessary and proper parties. He further submitted that a complaint has already been filed against defendants No. 2 to 4 at PS Nangloi on 11.05.2017 on the allegations of fraud and cheating. The defendants sold the factory of defendant No.1 at Himachal Pradesh in order to evade the payments of outstanding dues to the plaintiff. Therefore, the defendants No. 2 to 4 are appropriate and necessary parties for the present suit. Ld. Counsel for plaintiff referred to para 2, 4 and 12 of the plaint wherein it is specifically averred that the defendants are alleged to be involved in the transactions and liability to pay suit amount.

11. I have gone through the Judgment in the case of Mukesh Hans (supra) and the pleadings of the parties. There is no dispute to the well settled preposition of law that a Company is a separate legal entity to its Directors and share holders. In the present case in para 2 and 4 of the plaint, the plaintiff has specifically averred about the business dealings with the defendants. So liability is also pleaded against the defendants No. 2 to 4 on the basis of 7 cheques issued. The cheques have been signed by defendant No.3 Sh. Gurumeet Sat want Sing. As per para 12 of the plaint, the defendants in order to avoid the liability of suit amount, already sold the factory of defendant No.1 at Himachal Pradesh. The allegations and averments require to be tested during the trial. In my opinion in the present facts and circumstances the principle of lifting corporate veil is applicable. There is specific averment with regard to fraud against the defendants No. 2 to 4, therefore, the Judgment in the case of Mukesh Hans (supra) is distinguishable.

12. In view of the above observation and discussion, the application under Order 1 Rule 10 CPC filed on behalf of defendants is dismissed.”

7. Having heard learned counsel for the parties, I am of the view that the order of the Trial Court is entirely unsustainable. The allegations contained in the plaint do not speak of any transaction with the defendant nos. 2 to 4 in their personal capacity. The business dealings, although claimed to be with the “defendants”, the bills and invoices enclosed with the plaint were all issued on the defendant no. 1 company. Similarly, the cheques mentioned in the plaint were drawn on the account of the defendant no. 1 – company, although they were signed by the defendant no. 2, as a director of the company. The factory which is alleged to be sold in order to evade a decree is also admittedly in the name of the company. The contention of the plaintiff is that the company acted through the defendant

nos. 2 to 4 and they thus incur a personal liability also. The Trial Court has correctly noticed that a company has a distinct legal personality and its directors and shareholders cannot ordinarily be held liable for its dues. However, the cryptic observation of the Trial Court that the circumstances of the present case attract the principle of lifting the corporate veil is not supported by the pleadings before it or the reasoning in the impugned order.

8. The doctrine of the lifting the corporate veil is not available in every case of a liability alleged against a company. To so hold would lead to the consequence that every commercial transaction involving a company will require to be defended by the directors, shareholders or other officers of the company in their personal capacity. This is anathema to the very concept of corporate legal personality, as established ever since the judgment of the House of Lords in *Saloman vs. A. Saloman & Co.* (1897) AC 22 (HL).

9. The doctrine of lifting the corporate veil is available in limited circumstances where it is permitted by statute, or where the corporate structure has been instituted to perpetuate a fraud. Following its decision in *LIC vs. Escorts Ltd* (1986) 1 SCC 264, the Supreme Court has had occasion to explain this doctrine in several judgments. While the class of cases in which lifting of the corporate veil may be resorted to has not been exhaustively defined, broadly this course is available when contemplated by statute, or required to ensure that effect is given to a beneficent legislation, or where the corporate structure has been created to perpetuate a fraud. The conditions have been summarized thus in the recent judgment of the Supreme Court in *Arcelormittal India Private Limited vs. Satish Kumar Gupta & Ors* (2019) 2 SCC 1:

“37. It is thus clear that, where a statute itself lifts the corporate veil, or where protection of public interest is of

paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole.”

The averments contained in the plaint, in the present case, do not include any allegation which would justify the lifting of the corporate veil.

10. Learned counsel for the petitioner has placed reliance upon the judgment in *Mukesh Hans* (supra) wherein the aforesaid proposition has been laid down by a Coordinate Bench of this Court in the following terms:-

“11. Indubitably, a company incorporated under the Companies Act, whether as a private limited company or a public limited company, is a juristic entity. The decisions of the Company are taken by the Board of Directors of a Company. The Company acts through its Board of Directors, and an individual Director cannot don the mantle of the Company by acting on its behalf, unless he is so authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. It is equally well settled that a Director of a Company though he owes a fiduciary duty to the Company, he owes no contractual duty qua third parties. There are, however, two exceptions to this rule. The first is where the Director or Directors make themselves personally liable, i.e., by execution of personal guarantees, indemnities, etc. The second is where a Director induces a third party to act to his detriment by advancing a loan or money to the Company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money.”

11. Learned counsel for the respondent has supported his submission by relying upon the judgment of the Karnathaka High Court in *Amar Pandey & Anr. vs. Saifullakhan S/o. Gaffarkhan Sawakar* [CRL.PET.No.100125/2017, decided on 29.05.2019]. The said judgment arose out of a complaint under Section 138 of the Negotiable Instruments Act, 1881 and concerns the liability of directors under that statute. Suffice it to say that the said judgment turns on the interpretation of the liability of directors and officers of a company in the case of an offence under Section 138 of the said Act, being committed by a company, and has no bearing on the civil liability of a director.

12. In the facts and circumstances abovementioned, therefore, the impugned order of the Trial Court dated 09.08.2018 is set aside. The defendant nos. 2 to 4 are deleted from the array of parties in the suit.

13. The present petition is allowed, in the terms aforesaid.

AUGUST 02, 2019

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PRATEEK JALAN, J.

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