

CR-4289-2019 (O&M)

Date of Decision:10.02.2020

VODAFONE IDEA LIMITED

.....PETITIONER

Vs.

YOGESH KUMAR GUPTA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Vishal Sharma, Advocate,
Mr. Prateek Gupta, Advocate and
Ms. Madhavi Aggarwal, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for respondent No.1.

Mr. Rajesh Kumar Sawariya, Advocate for
Mr. Vikas Chatrath, Advocate for respondent No.2.

RAJBIR SEHRAWAT, J.(Oral)**CM No. 24475-CII-2019**

This is an application for placing on record Annexures P-19 to P-24 for bringing New/Additional Facts and Documents on record subsequent to filing of present revision petition.

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record.

CM No. 24804-CII-2019

This is an application for placing on record the short submissions by way of affidavit alongwith Annexures R-1/1 to R-1/4 and for exemption from filing original/certified copies of said Anneuxes.

For the reasons mentioned in the application, the same is

allowed. Accompanying documents are taken on record.

CR-4289-2019

The petitioner has filed this petition challenging the orders dated 17.05.2019 and 20.05.2019 passed by the Civil Judge (Sr. Divn), Karnal, in Civil Suit No.1125 of 2019, whereby the Local Commissioner was ordered to be appointed; and the interim order of status quo was passed as well as the report of Local Commissioner, dated 17.05.2019.

It is contended by the learned Sr. counsel for the petitioner that the suit by respondent No.1 was filed on 15.05.2019. As a measure of fraud upon the company and upon the Court, the petitioner company was shown to have been suited through one Ravinder Kumar, who has no connection with the petitioner-company. On the same day i.e. 15.05.2019, notice was issued for 17.05.2019, i.e. with a gap of one day. On 17.05.2019, the trial Court appointed the Local Commissioner and also sought the report on the same day by 5.00 P.M. Even the report sought by the trial Court was of a specific kind which was to benefit the respondent No.1/plaintiff. On receipt of the report, impugned order dated 20.05.2019 has been passed, ordering maintaining the status quo regarding the suit property. It is further submitted that the further orders passed by the trial Court itself show that the petitioner company was never served when this entire sequence of events had taken place. All the orders have been passed behind the back of the petitioner-company and by adopting the fraudulent means by the respondent No.1/plaintiff herein, in collusion with respondent No.2.

It is further pointed out by the learned Sr. counsel for the petitioner that there is no question of any contempt on the part of the petitioner because the petitioner-company had never been served with any

summon or notice of the suit from the Court. The petitioner came to know about all these happenings, only when the representatives of the company were prevented from entering the suit property by the respondents/plaintiffs and thereafter, the file of the suit before the trial Court was inspected. Accordingly, the present petition has been filed. In view of these facts, it is submitted by the learned Sr. counsel for the petitioner that the impugned orders, alongwith contempt proceedings deserve to be set aside and appropriate action deserves to be initiated against the respondent No.1/plaintiff.

On the other hand, learned counsel for the respondent No.1/plaintiff has submitted that the impugned order is an order passed in an application moved for interim relief. The said order is appealable one. However, the petitioner has not filed any appeal before the appropriate Court. Rather, the petitioner has rushed to the High Court directly. It is further submitted that the respondent No.1/plaintiff had furnished the registered covers for effecting service in the suit; upon the petitioner. However, the counsel has not pointed out any specific date on which the petitioner might have been served with the summons or the orders passed by the trial Court.

Having heard the learned counsel for the parties, this Court is of the view that since the main grievance is against the interim order passed by the trial Court, therefore, the petitioner should prefer the statutory appeal in the first instance. Admittedly, since the impugned orders were passed even before the effecting service upon the petitioner, therefore, it would be appropriate, if the effect of the same is kept in abeyance till date the

petitioner approaches the Appellate Court in appeal.

Accordingly, the present petition is disposed of with liberty to the petitioner to approach the Court below in appeal; in the first instance within a period of three weeks. It is further ordered that for a period of three weeks from today, the interim order passed by the trial Court, as well as the contempt proceedings initiated against the petitioner, shall remain stayed. Still further it is directed that the appeal filed before the Lower Appellate Court, if any, shall be decided expeditiously.

(RAJBIR SEHRAWAT)
JUDGE

10.02.2020

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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No