

\$~38

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

Date of Decision: 14th February, 2020

+ **CM(M) 184/2020 and CM APPL. 6071/2020, 6072/2020**

M/S EAST INDIA AUTO MANUFACTURING COMPANY (P) &
ORS. Petitioners

Through: Mr. Ranjeet Kumar, Advocate (M:
9999904717).

versus

ISHWAR SINGH Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 26th November, 2019 by which the application under Order I Rule 10 and Order VI Rule 17 CPC has been allowed by the Trial Court. The suit is one for recovery filed by Mr. Ishwar Singh against three Defendants originally - M/s. East India Auto Manufacturing Company (P) Ltd, Mr. Kanhaiya Lal Dungarwal and his son - Mr. Kuldeep Dungarwal. The suit seeks recovery of a sum of Rs.10,38,243/- along with interest.

2. In the written statement, the Defendant No. 1 has taken a stand that it or its directors has never dealt with the Plaintiff - company and that the company is defunct. The written statement specifically avers that the invoices and bills which have been filed by the Plaintiff relate to East India Auto Manufacturing which is a proprietary firm of Defendant No.3 – Mr. Kuldeep Dungarwal. Under these circumstances, an application was moved by the Plaintiff under Order I Rule 10 read with under Order VI Rule 17 to

implead East India Auto Manufacturing Company with its address in Baddi, Himachal Pradesh through its proprietor - Mr. Kuldeep Dungarwal, as Defendant No.4 in the matter, which has been allowed.

3. Ld. counsel for the Petitioner submits that though the Defendant No. 3 does have dealings with the Plaintiff, the suit was against the private limited company and the father and not against the Defendant No. 3. The Defendant No. 3 and his father are not on talking terms and thus, the impleadment is erroneous.

4. The impugned order is quite clear. In the impugned order, the Trial Court comes to the conclusion that in the written statement, Defendant Nos. 1 and 2 state that they have never dealt with the Plaintiff and the invoices have the Baddi address which is the address of East India Auto Manufacturing Company which is the sole proprietary concern of Defendant No.3. Under these circumstances, the Trial Court has allowed the application. The observations of the Id. Trial Court are as under:

“11. Now, in the written statement filed on record by the defendants no. 1 and 2, it has been further stated that M/s East India Auto Manufacturing Pvt Limited seems to be a firm and not a company. It has been further stated that the defendant no. 3 is the son of the defendant no. 2 but he is not associated with the defendant no.1. It has been further stated that the defendant no.3 has a separate firm and the defendant no.2 is not on talking terms with him for the last several years. It has been further stated in the written statement that the defendant no. 3 is not associated with the defendant no. 1 company and he has a separate firm.

12. Prior to the present application filed by the plaintiff, the defendant no. 3 had filed on record two applications one U/o 7 Rule 11 of the CPC and the another U/o 7 Rule

10 of the CPC. The abovesaid applications were dismissed vide orders dated 18.12.2018. The plea taken by the defendant no. 3 was not having any concern with the defendant no. 1 company.

13. Now, if the written statement filed by the defendant no. 1 and 2 are carefully gone through, it becomes evidently and apparently clear that the defendants no.1 and 2 have merely stated that the defendant no.3 has no connection with the defendant no.1, It has been further stated by the defendant no.1 and 2 in the written statement that the defendant no.3 is having a separate firm and he is carrying on its business but neither the name, of the firm nor the place of his business has been mentioned.

14. The reply filed by the respondents no.1 and 2 qua the defendant no.3 appears to be evasive. The invoices which have been placed on record by the plaintiff mentions the address of the defendant as M/s East India Auto Manufacturing Pvt Limited having its office at 513/5, Village Kondi, PO Thana, Teh. Nalagarh, Industrial Township, Baddi, Himachal Pradesh.

15. The plaintiff has also placed on record copies of two cheques bearing cheque no. 465539 dated 07.10.2015 and cheque no. 252461 dated 07.10.2015 issued by the defendant no.3 in favour of the plaintiff. The written statement was filed on record by the defendants- no.1 and 2 only on 02.07.2018 in the present matter.

16. I am of the opinion that keeping in view the entirety of the factual matrix involved in the present matter, the plaintiff does not seem to be confirm about the identity of M/s East India Auto Manufacturing Pvt Limited. Since the stand of the defendants no.1 and 2 has been evasive as discussed herein above and keeping in view the fact that the defendant no.3 has not denied that he is carrying on the business in the name and style of his firm, to my mind, the controversy involved in the present matter cannot be decided without the impleadment of M/s East

India Auto Manufacturing Pvt Limited having its office at 513/5, Village Kondi, PO Thana, Teh. Nalagarh, industrial Township, Baddi, Himachal Pradesh.”

A perusal of the written statement also shows that the Defendant Nos. 1 and 2 completely deny having had any relationship with the Plaintiff and the main company i.e. Defendant No. 1 is stated to be defunct.

5. Thus, it is clear that while Defendants 1 and 2 are not taking a clear stand, the defendant no.3 and his proprietary concern, do appear to have some connection with the transaction. Further owing to the fact that the invoices and the bills contain the Baddi address which is the address of the proposed defendant and the name of the proprietary concern of Defendant No. 3, the impleadment cannot be faulted with. The question as to whether Defendant Nos. 2 and 3 are on good terms and whether there was any business relationship with the Plaintiff and the question as to whether a decree is liable to be passed, if so against which of the defendants, is the subject matter of the suit, which would be adjudicated after evidence is adduced. At this stage, it cannot be said that the impleadment is erroneous or incorrect. The impugned order does not warrant any interference.

6. Needless to add, the observations in the impugned order and in the present order would not bind the final adjudication in the suit.

7. The petition with all pending applications is accordingly dismissed in these terms. Order *Dasti*.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 14, 2020
MR/A.S.