$~2

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

% Judgment delivered on: 10.12.2020

\+ CM(M) 540/2020

M/S NISSAN MOTOR INDIA PRIVATE LIMITED

..... Petitioner

versus

M/S FERVENT COMMUNICATIONS PRIVATE LIMITED & ANR. ..... Respondents

Advocates who appeared in this case:
For the Petitioner: Mr. Piyush Sharma, Advocate.

For the Respondents: None.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.27809/2020 (exemption)

Exemption is allowed subject to all just exceptions.

CM (M) 540/2020 & CM APPL.27808/2020 (stay)

1. The hearing was conducted through video conferencing.

2. Petitioner impugns order dated 21.01.2020, whereby, application of the petitioner under Order 1 Rule 10 CPC has been dismissed.

Signature Not Verified
Digitally Signed By:KUNAL MAGGU
Signing Date:10.12.2020 22:13:42
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

3. Respondent No.1 had filed the subject suit for recovery against petitioner as well as respondent No.2, one of the dealers of the petitioner.

4. Averment in the plaint is that the respondent No.2 is one of the authorised dealers of the petitioner and the petitioner had approached respondent No.1/Plaintiff to organize and conduct events at the showroom of the respondent No.2.

5. It is contended in the plaint that the event was organized by the petitioner and petitioner has also acknowledged his liability and has in fact made the payment of the bill amount to respondent No.2 – its dealer. However, the dealer has not paid the amount to him.

6. Learned counsel for the petitioner contends that there is no material to show that the petitioner had ever dealt with the respondent No.1/plaintiff or there is any privity of contract.

7. He further submits that there is an admission on behalf of the respondent No.1 that the payment has been made by the petitioner to respondent No.2 and as such, the petitioner cannot be made liable for making double payment.

8. Trial Court, by the impugned order, has noticed that there is a specific averment that the petitioner had approached respondent No.1 to organize the event and payment was made by the petitioner to respondent No.2.

Signature Not Verified
Digitally Signed By:KUNAL MAGGU
Signing Date:10.12.2020 22:13:42
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

9. Trial Court has held that it is apparent that the petitioner had availed of the services in the form of the event and consequently both the respondents are liable for the recovery of the alleged amount, if proved and as such petitioner is a necessary party.

10. Perusal of the Plaint shows that there is a categorical averment in the Plaint that petitioner had approached the respondent No.1 – plaintiff to organize and conduct the events.

11. It is disputed by the learned counsel for the petitioner that the petitioner had ever approached respondent No.1. It is contended that there is no material on record to show there was any privity of contract between the Petitioner and Respondent No. 1.

12. No doubt that there is a dispute as to whether petitioner had approached respondent No.1 or there is a privity of contract between the petitioner and respondent No.1 or not. But, that is a matter of trial and in view of the specific averment in the plaint it cannot be, at this stage, held that the petitioner is neither necessary nor a proper party. This of course would be an issue which the Trial Court would consider at an appropriate stage.

13. Further averment of respondent No.1 that the payment has been made by the petitioner to respondent No.2 and the respondent No.2 has failed to make the payment to him, raises once again a disputed question of fact as to whether the petitioner can be made liable to pay

Signature Not Verified
Digitally Signed By:KUNAL MAGGU
Signing Date:10.12.2020 22:13:42
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

the said amount once again. It may, however, be observed that the respondent No.2 is one of the dealers of the petitioner.

14. In view of the specific averments, which raise disputed questions of fact, it cannot be said that Petitioner is neither a necessary nor a proper party. The application under Order 1 Rule 10 CPC seeking deletion of the petitioner at this stage has rightly been rejected by the Trial Court.

15. I find no infirmity in the impugned order of the Trial Court. However, the observations in the impugned order that both the defendants are liable for recovery of the alleged amount, if proved, would not come in the way of the petitioner's defence that as he has paid the amount to its dealer respondent No.2, he is not liable to make double payment. This would be a question which the Trial Court would consider at an appropriate stage.

16. I find no merit in the Petition. The Petition is, accordingly, dismissed.

17. Copy of the judgment be uploaded on the High Court website and be also forwarded to learned counsels through email.

DECEMBER 10, 2020 **SANJEEV SACHDEVA, J**
st

Signature Not Verified
Digitally Signed By:KUNAL MAGGU
Signing Date:10.12.2020 22:13:42
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.