

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

% **Date of decision: 8th September, 2021.**

+ **CM(M) 156/2021 & CM No.7295/2021 (for stay)**

ARCHANA SETHI & ANR.

..... Petitioners

Through: Mr. Yati Sharma, Advocate.

Versus

SACHIN VERMA

..... Respondent

Through: Mr. Athar Alam & Ms. Sumbul
Athar, Advocates.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 7th January, 2020 passed by the District & Sessions Judge, South East, Saket Court, New Delhi in CS No.880/2018, whereby the application filed by the respondent under Order I Rule 10(2) of the Civil Procedure Code (CPC) read with Order XVIII Rule 17 of the CPC has been allowed and petitioner no.2, Sh. Raj Kumar, has been impleaded as defendant no.2 in the suit.

2. Learned counsel appearing on behalf of the petitioners has submitted that, (i) it has been noted in the order dated 4th June, 2018 passed by the Trial Court that liability to pay the suit amount was only of petitioner no.1 and that petitioner no.2 was impleaded only because he was the father of

petitioner no.1; (ii) petitioner no.2 was deleted as a party on 4th June, 2018 and it was only on 23rd September, 2019 that the application seeking impleadment of petitioner no.2 as a defendant was filed by the respondent/plaintiff, after a delay of more than a year and that too after the respondent/plaintiff's evidence was completed; (iii) no specific averments have been made in respect of the petitioner no.2; (iv) property that was sold and in respect of which brokerage is claimed in the suit by the respondent/plaintiff is in the name of the petitioner no.1 and that petitioner no.2, in his capacity as the father of petitioner no.1 was only assisting the petitioner no.1 in the process; (v) the name of the petitioner no.2 has already been mentioned in the list of witnesses filed on behalf of petitioner no.1 and he may be examined as a witness in the case for the role he played in the transaction; and, (vi) a person sought to be joined in the array of parties must be one whose presence is necessary to the suit, and merely because petitioner no.2 may have relevant evidence to give on some of the questions involved in the matter, he is not a necessary party for adjudication of the suit. In this regard, reliance is placed on the judgment of the Supreme Court in ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.*** 1992 (2) SCC 524.

3. The counsel appearing on advance notice on behalf of the respondent/plaintiff relies upon paragraph 15 of the impugned order to state that the petitioner no.2 has rightly been impleaded as a party in the suit. He draws attention to paragraph 16 of the impugned order to state that in the evidence of the respondent/plaintiff it has come to notice that he had no dealings whatsoever with the petitioner no.1.

4. I have heard the counsels for the parties. The plaint from which the present petition arises was filed to recover brokerage amount of Rs.3,30,000/- due to the respondent/plaintiff in respect of sale of the property owned by the petitioner no.1. It is the case of the respondent/plaintiff in the suit that he was the broker in respect of the said deal and hence, was liable to be paid 1% of the sale consideration towards brokerage charges. It is an admitted position in the plaint that the property which was sold was solely in the name of petitioner no.1. If the property was in the name of petitioner no.1 and the said property was sold with the respondent/plaintiff acting as a broker, the liability to pay brokerage, if any, would be that of the petitioner no.1. Merely because the petitioner no.2, being the father of the petitioner no.1 assisted in the whole process of the sale of the property would not mean that the liability to pay brokerage charges would be fastened on him. There is nothing pleaded in the plaint which shows that there would be any liability of petitioner no.2 to pay the brokerage charges.

5. Even if the services were provided by the respondent/plaintiff to the petitioner no.2, the beneficiary of the said services was petitioner no.1. In any event, the application filed by the respondent/plaintiff also invokes Order XVIII Rule 17 of the CPC, that provides for recalling any person as a witness. There is no dispute between the parties about petitioner no.2 appearing as a witness in the case. The name of the petitioner no.2 has already been given in the list of witnesses by the petitioner no.1 and the respondent/plaintiff would have the right to cross examine petitioner no.2 when he appears as a witness. In the event petitioner no.2 does not appear as



a witness on behalf of the petitioner no.1 the respondent would have a right to summon the petitioner no.2 to appear as a witness.

6. Therefore, no useful purpose would be served in impleading petitioner no.2 as a defendant in the suit. In the event, the respondent/plaintiff succeeds in his suit, he would be liable to recover the amounts due from petitioner no.1, who was the beneficiary and received the sale proceeds from the sale of the said property.

7. In view of the above, the petition is allowed and the impugned order dated 7th January, 2020 is set aside.

8. CM No.7295/2021 is disposed of.

SEPTEMBER 8, 2021
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AMIT BANSAL, J