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

Date of Decision: 1st September, 2021

\+ **C.R.P. 29/2021 & CM APPL. 10391/2021**

LARS VILLING ..... Petitioner

Through: Mr. Anjaneya Mishra, Mr. Sahil and Mr. Nidish Gupta, Advocates.

versus

ANIL KANODIA & ORS. ..... Respondents

Through: Mr. Arpit Srivastava, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present petition has been filed challenging the impugned order dated 24th September, 2020 passed by the ld. District and Sessions Judge, South East District, Saket Courts, New Delhi (*hereinafter, "Trial Court"*) in ***CS DJ No. 8047/2016***. By the impugned order, an application filed by the Petitioner herein/ Defendant No. 1 in the suit (*hereinafter, "Defendant No.1"*) under Order VII Rule 11 of the CPC r/w Order I Rule 10 of the CPC has been dismissed.

3. The brief background is that a suit for recovery of money, damages and interests was filed by the Respondents herein/ Plaintiffs (*hereinafter "Plaintiffs"*) seeking recovery of a sum of Rs. 33,04,205/- along with interest @ 18% from the Defendants in the suit. The suit has been instituted against three Defendants i.e., Mr. Lars Villing- Defendant No. 1 (Wilhelmshaven, Germany), M/s Alba Metall Nord GmbH – Defendant No. 2 and Mr. Amit Taneja- Defendant No. 3 (Met Globe India Pvt Ltd). The allegation in the suit is that a commercial arrangement was negotiated between the Plaintiffs and the Defendant No. 2, which is a German company, in which the Defendant No. 1-

Mr. Villing was an active participant, and there was fraud and embezzlement of funds. The claim of the Plaintiffs in the suit specifically against Mr. Villing is that there is one Proforma Invoice and a Sales Contract, both of which have been placed on record, wherein Mr. Villing is shown as the specific person to whom the same is addressed, on behalf of Defendant No. 2- Company.

4. The Trial Court, vide order dated 24th September 2020, had deleted Defendant No.3 from the suit. However, the application for deletion from the array of parties, filed by Defendant No. 1 - Mr. Villing, has been rejected by the Trial Court, vide the impugned order dated 24th September 2020. The reasoning given by the Trial Court in the impugned order is that Mr. Villing was the person who negotiated the terms of the commercial arrangements with the Plaintiffs. The letter dated 28th September, 2016, that was addressed by the Defendant No. 2 Company to the Court, after service, was also considered by the court to recognise that Mr. Villing is an employee of Defendant No. 2 and had been representing the Defendant No. 2, and its business, in India. The court held that as the Defendant No.2 was negotiating through its employee - Defendant No.1 i.e., Mr. Villing, he would be the proper party to the suit. Accordingly, his application for deletion was rejected. The relevant extracts of the findings of the Trial Court read as under:

> *"11. In the plaint, the plaintiffs have disclosed the capacity of the defendant No. 1 as being the one, who negotiated the terms of the contract on behalf of the defendant No. 2 with the plaintiffs. <u>It would be pertinent to refer to Letter dated 28.09.2016 that was addressed by the defendant No. 2 to the Court after the service of the suit was effected, wherein it was mentioned that defendant No. 1 Sh. Lars Villing is 100% employee of the defendant No. 2 and handled the export business to India. So, this may be noted for further communication. As per the defendant No. 2 itself, it is the defendant No.</u>*

> *1, its employee who has been representing the defendant No. 2 and was responsible for the conduct of business of the defendant No. 2 in India.*
>
> *12. Ld. Counsel for the plaintiffs had made a reference to the two proforma invoices which alone are witnesses to the contract between the parties. In one of the proforma invoice, the name of the concerned person is Sh. Lars Villing, while in the other it is Sh. Anke Frieda Bahring. Moreover, these proforma invoices have been issued on and on behalf of the defendant No.2.*
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> *13. The defendant No. 2 was negotiating through its employee defendant No. 1 and though it would not make defendant No. 1 liable in the personal capacity but he is definitely a proper party as defendant No. 2 was being represented in India through defendant No. 1, which is admitted by the defendant No. 1 and is also substantiated by proforma invoice.*
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> *14. In so far as, objection taken by the defendant No. 1 in regard to the territorial jurisdiction is concerned, it is pointed out by the Ld. Counsel for the plaintiffs that this court vide its order dated 09.07.2019 had already held that it is a mixed question of fact and law and this cannot be done in application under Order 7 Rule 11 CPC."*

It is this order of the Trial Court, that has been impugned in the present Revision petition by the Defendant No. 1.

5. Mr. Anjaneya Mishra, ld. counsel for Defendant No. 1, submits that a certificate had been issued by the Defendant No. 2- Company, to the effect that Mr. Villing was an employee who was serving the company and he was neither the contractor nor a shareholder or any person having a stake in the said company. The employment of Mr. Villing was between June, 2012 to 31st December, 2014, and from January, 2015 to 31st May, 2019. Since the said

date, Mr. Villing stopped working for the Defendant No. 2- Company. Therefore, he submits that the Defendant No.1 cannot be liable for action taken by him in the course of his employment with the Defendant No.2 Company.

6. Mr. Arpit Srivastava, ld. Counsel appearing for the Plaintiffs, however, submits that this document which shows the employment details of Defendant No. 1, is not on record of the Trial Court and hence cannot be relied upon in this Revision Petition. He, further, submits relying on the Proforma Invoice and the Sales Contract, that the Defendant No. 1- Mr. Villing, was the main person who was involved in the negotiations and the embezzlement has happened under his watch. He therefore submits that he ought not be deleted from the array of parties.

7. Heard ld. Counsels for the parties and perused the record.

8. The case of the Defendant No. 1 is that since he was only an employee, he cannot be made to bear the responsibility of the decisions/ liabilities of the Defendant No. 2- Company. He has already left the employment of the company.

9. This court is of the opinion that this fact can be proved by the Defendant No. 1 in the suit before the Trial Court, by leading evidence as to his specific role, as also by placing on record any document to show the termination of his employment with the German company. Admittedly, the document on Annexure R-10, which is placed on record in this petition, detailing the employment tenure of Mr. Villing, is not before the Trial Court.

10. This Court called for the issues which have been framed in the suit before the Trial Court. It is noticed that as per the order dated 11th November, 2020 passed by the Trial Court, the issues which have been framed in the suit are as under:

"1. Whether the plaintiffs are entitled to recovery of Rs.

33.04.205/-, as prayed for? OPP.

2. Whether the plaintiffs are entitled to interest, if so at what rate and for which period? OPP.

3. Relief."

11. The Defendant No. 2- Company had written a letter to the Trial Court which reads as under:

> *"ALBA Metal Nord GmbH hereby confirm the receipt of documents from District & Sessions Judge, Saket Courts Complex, New Delhi, SUIT No: CS 60/2015. And do out Employee Lars Villing, to whom same set of documents have been sent.*
>
> *Mr. Lars Villing is 100% Employed by ALBA Metal Nord GmbH and handle the export business to India, so we please ask you to have this in attention for future communications.*
>
> *<u>The contracts issued are all related to out general terms of sales and conditions which are mentioned in our contracts and in detail on our website and all claims or issues regarding business with ALBA Metall Nord GmbH should be under the jurisdiction of Federal Republic of Germany only</u>."*

Thus, the Defendant No.2 has also raised an issue of territorial jurisdiction.

12. Considering the overall facts, this Court is of the opinion that the question as to whether the Defendant No. 1 is a proper party to the present suit, would have be adjudicated after documentary or oral evidence, if any, on behalf of Defendant No. 1- Mr. Villing. Accordingly, the following two additional issues are framed in the suit before the Trial Court bearing ***CS DJ No. 8047/2016*** :

i. Whether the Court does not have the jurisdiction to try and entertain the present suit? OPD

ii. Whether the Defendant No.1 was not a proper party to the suit? OPD-1.

13. The suit is at the stage of evidence. Accordingly, evidence shall also be led on the above two issues, in addition to the issues already framed.

14. It is made clear that the issue relating to the Defendant No. 1 being a proper party, shall be adjudicated by the Trial Court at the final stage, without being influenced by the conclusion or findings in the impugned order dated 24th September, 2021.

15. Parties to appear before the Trial Court on the date fixed. The Trial Court to endeavour to hear the parties and conclude the trial in the matter, as also adjudicate the suit, within a period of one year. Since Mr. Villing is a resident of Germany, the Trial Court is permitted to record evidence, if required, through video conferencing or any online platform, by following the applicable practice directions/Rules.

16. This Court has not given any finding on the merits of the matter, in view of the nature of the disputes and the case set up by the parties.

17. The present petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 1, 2021
dj/Ak