

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

% **Date of decision: 26th November, 2021**

+ **CM(M) 214/2020 & CM No. 6984/2020 (for stay)**

AMBALAL SARABHAI ENTERPRISES LTD. Petitioner

Through: Ms. Manmeet Arora with Mr. Sarad
Kumar Sunny, Mr. Tarang Gupta &
Ms. Shambhari Kala, Advocates.

versus

**AKUMS DRUGS & PHARMACEUTICALS LTD.
& ANR. Respondents**

Through: Mr. Rajiv Raheja, Advocate for R-2.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 16th October, 2019 passed by the Court of Additional District Judge (ADJ)-02, North West, Rohini Courts, Delhi in Civil Suit No.75301/2016, whereby the application filed on behalf the petitioner/defendant no.2 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking deletion from the array of parties, has been dismissed.

2. The brief facts leading to the filing of the present petition are as follows:

2.1 The respondent no.2/defendant no.1 was an all India distributor of the petitioner/defendant no.2's generic pharmaceutical division

and in this capacity, the respondent no.2/defendant no.1 could get pharmaceutical tablets and capsules manufactured from various third-party manufacturers, including the respondent no.1/plaintiff.

- 2.2 The respondent no.1/plaintiff and the respondent no.2/defendant no.1 entered into an agreement dated 29th September, 2005, whereby the respondent no.2/defendant no.1 was to place orders for the pharmaceutical tablets and capsules that were to be manufactured by the respondent no.1/plaintiff on a principal-to-principal basis.
- 2.3 In order to discharge the outstanding balance amount of Rs. 60,47,218/-, and payment of purported interest in the sum of Rs. 10,00,000/- accrued on the principal sum of Rs. 60,47,218/, the respondent no.2/defendant no.1 issued cheques in favour of the respondent no.1/plaintiff on 14th March, 2008.
- 2.4 On presentation, the said cheques were returned unpaid by the banker of the respondent no.2/defendant no.1 vide cheque returning memos.
- 2.5 The respondent no.1/plaintiff issued the letter dated 14th December, 2007 calling upon the respondent no.2/defendant no.1 to submit 'Form C' under the Central Sales Tax Act, 1956 (hereinafter referred to as 'C Forms') in respect of the supplies made.
- 2.6 The respondent no.2/defendant no.1 vide letter dated 18th December, 2007 called upon the petitioner/defendant no.2 to supply the C Forms to the respondent no.1/plaintiff.
- 2.7 The contract between the petitioner/defendant no.2 and the

respondent no.2/defendant no.1 was terminated on 4th March, 2008, at the instance of petitioner/defendant no.2, by serving notice of three months.

- 2.8 The respondent no.1/plaintiff issued legal notices against the respondent no.2/defendant no.1 and the petitioner/defendant no.2 on 27th March, 2008.
- 2.9 The petitioner/defendant no.2, vide letter dated 5th May, 2008 stated that that they would be issuing the C Forms after certain information/clarification had been supplied by the respondent no.1/plaintiff.
- 2.10 The respondent no.2/defendant no.1 vide their letter dated 14th May, 2008, informed that the petitioner/defendant no.2 had started the process of issuing C Forms to the respondent no.1/plaintiff.
- 2.11 The respondent no.1/plaintiff wrote a letter dated 8th January, 2009 to the petitioner/defendant no.2, reiterating that they had not deposited the C Forms, despite reminders.
- 2.12 The respondent no.1/plaintiff, filed a suit for recovery in 2009 for the admitted amount of Rs. 60,47,218/- and the interest of Rs. 31,18,757/-, calculated from the due date of payment till 31st July, 2009 @ 24% per annum on the above outstanding amount, totalling to Rs. 91,65,975/-.
- 2.13 The petitioner/defendant no.2 filed an application under Order I Rule 10 of the CPC, stating that the petitioner/defendant no.2 had been improperly impleaded as a party to the present suit and accordingly sought to be deleted from the array of parties of the suit.

2.14 Vide the impugned order dated 16th October, 2019 the ADJ dismissed the said application of the petitioner/defendant no.2. Hence, the present petition.

3. The application filed by the petitioner/defendant no.2 seeking deletion from the array of parties was dismissed by the ADJ vide the impugned order reasoning/observing that, (i) the petitioner/defendant no.2 appeared to be a proper party to the suit; (ii) since a letter purportedly issued by the petitioner/defendant no.2 asking the respondent no.1/plaintiff to supply particulars for issuance of C Forms was on record, *prima facie* it was reflected that the petitioner/defendant no.2 was under the obligation or at least was having some express or implied contract to issue the C Forms; (iii) the total claim of recovery of Rs.91,65,975/- of the respondent no.1/plaintiff included the amount recoverable on account of the non-issuance of the C Forms; (iv) the bills were allegedly issued in the name of petitioner/defendant no. 2; and (v) while passing the decree, the Court may decide whether the decree was to be executed partly or in full against both the defendants jointly or a particular sum was to be recovered from one or other defendant only.

4. None appears on behalf of the respondent no.1/plaintiff, who was proceeded *ex-parte* vide order dated 20th September, 2021.

5. The counsel appearing on behalf of the petitioner/defendant no.2 has drawn attention of the Court to paragraphs 8, 10, 11, 12, 15 and 18 of the plaint filed in the said suit to contend that the suit has been filed only on the basis of cheques issued by respondent no.2/defendant no.1 in favour of the respondent no.1/plaintiff as detailed in paragraph 11 of the plaint and the said cheques were dishonoured as described in paragraph 12 of the plaint.

6. Attention is drawn to paragraph 15 of the plaint to contend that the respondent no.1/plaintiff had filed the present suit only in respect of Rs.60,47,218/-, which was the principal amount and Rs.31,18,757/-, which was the interest calculated at the rate 24% per annum. However, it is specifically noted in paragraph 15 of the plaint that the present suit is not claiming any amount towards the penalty imposed on the respondent no.1/plaintiff on account of non-furnishing of C Forms.

7. The relevant portions from the plaint are set out below:

“8.That it is submitted that from time to time, the Defendant No.1 for and on behalf of his firm, had called upon the Plaintiff Company to supply the goods directly to the Defendant No.1 – with further directions to raise the Invoices/Bills in the name of Defendant No.2.

...

10.That after being satisfied with the quality and quantity of goods supplied by the Plaintiff Company to the Defendant No.1, the Defendants made the following payments in favour of Plaintiff Company:-

.....
S.NO.CHEQUES NO. & DATE NAME OF THE BANK AMOUNT
.....

.....		
1. 019545 dt.14.10.2006		6,32,542/-
2. Direct Deposit dt.31.10. 06.		9,35,476/-
3. 134895 dt.03.02.2007		6,32,768/-
4. 146176 dt.16.03.2007		6,35,913/-
5. Direct Deposit in ICICI Bank		5,71,349/-
6. 171964 dt.10.05.2007		5,04,689/-
		
		39,12,737/-
		

11. That in order to discharge the balance debt/liability of Rs.60,47,218/- (Rs. Sixty Lakhs Forty Seven Thousand Two Hundred Eighteen Only) (Rs.37,76,014/- towards balance supply of goods and Rs.22,71,204/- towards difference of 6% in Sales Tax) and interest accrued thereon amounting to Rs.10,00,000/- (Rs. Ten Lakhs Only) towards the Plaintiff Company the Defendant No.1 for and on behalf of his firm under his signature and under the instructions of the Defendant No.2 issued following cheques in favour of the Plaintiff Company towards payment of admitted liability:-

<i>S.NO.</i>	<i>CHEQUE NO. & DATE</i>	<i>DRAWN ON</i>	<i>AMOUNT (RS)</i>
1.	306009 dt.14.03.2008	UTI Bank Ltd. Opp. New Bus Stand Jeevan Bima Marg, Pandri, Raipur	Rs.10,00,000/-
2.	306010 dt. 14.03.2008	-Do-	Rs. 60,47,218/- ----- Rs. 70,47,218/- -----

12. That on presentation, the said cheques were returned unpaid by the banker of the Defendant No.1 vide Cheque Returning Memos dated 17.03.2008 and 19.03.2008 respectively with the remarks "PAYMENT STOPPED BY THE DRAWER" and thereafter the Banker of Plaintiff Company informed the Plaintiff Company about the dishonour of the above mentioned cheques by Debit memo dated 18.03.2008 & 20.03.2008.

...

15. That in addition to the admitted amount of Rs.60,47,218/- (Rs. Sixty Lakhs Forty Seven Thousands Two Hundred Eighteen only), the Defendants are also liable to make payment of agreed rate of interest @ 24% p.a. on the above outstanding amount of Rs.60,47,218/- (Rs. Sixty Lakhs Forty Seven Thousands Two Hundred Eighteen only) from the due date of payment which comes to Rs.31,18,757/- (Rs. Thirty One Lakhs Eighteen Thousand Seven Hundred Fifty Seven Only) calculated upto 31.07.2009. Besides this amount, the Defendants are also liable to pay a sum of Rs.33,82,155/- (Rs. Thirty Three Lakhs Eighty Two Thousands One Hundred Fifty Five Only) to the Plaintiff Company towards the penalty @ 150% towards non supply of C Forms to the Plaintiff Company. However, the Plaintiff Company is not claiming the said amount of penalty in the present suit since the same is outside the purview of Order XXXVII CPC.

...

18. That, accordingly, the following amounts are due and payable by the Defendants to the Plaintiff Company:-

Principal Outstanding
(inclusive of difference amount of C Forms)

Rs.60,47,218/-

Interest @ 24% from the due date of payment
Till 31.07.2009

Rs.31,18,757/-

Rs.91,65,975/-

”

8. The counsel for the petitioner/defendant no.2 has also drawn the attention of the Court to the agreement dated 29th September, 2005 executed between the respondent no. 1/plaintiff and the respondent no.2/defendant no.1 to contend that the agreement between the parties was on a “Principal-to-Principal Basis” and Clause 4 of the said agreement to contend that the

respondent no.2/defendant no.1 was responsible for deposit of C Forms to the respondent no.1/plaintiff. Attention of the Court is drawn to paragraph 12 of the reply filed on behalf of the respondent no.1/plaintiff to the leave to defend application filed by the respondent no.2/defendant no.1 to contend that it was denied by the respondent no.1/plaintiff, by relying upon the said Clause 4 of the agreement, that if there was default/liability arising out of non-payment of tax, arrears of sale tax, the same had to be settled between the petitioner/defendant no.2 and the respondent no.1/plaintiff. Accordingly, it is contended that the impugned order wrongly did not delete the petitioner/defendant no.1 from the array of parties on the basis of the alleged liability of the petitioner/defendant no.1 to furnish C Forms.

9. The counsel for the respondent no.2/defendant no.1 disputes that the entire suit amount is based solely on the cheque amounts. He further submits that, (i) all the bills raised by the respondent no.1/plaintiff were issued in the name of the petitioner/defendant no.2; (ii) after termination of the contract between the petitioner/defendant no.2 and the respondent no.2/defendant no.1, at the instance of petitioner/defendant no.2 on 4th March, 2008, there was a novation of the contract; (iii) in terms of the transport receipt dated 28th August, 2008, 366 parcels were sent by the respondent no.2/defendant no.1 to the petitioner/defendant no.2; therefore, it cannot be stated that goods were not supplied to the petitioner/defendant no.2; (iv) in the letter dated 27th June, 2009 issued by the petitioner/defendant no.2 to the respondent no.1/plaintiff, the petitioner/defendant no.2 had admitted to the liability of Rs.27,55,300/-; (iv) as per the letter dated 8th January, 2009 issued by the respondent no.1/plaintiff to the petitioner/defendant no.2, it is the liability of the

petitioner/defendant no.2 to furnish C Forms; and (v) the respondent no.1/plaintiff is *dominus litis* and has claimed in the said suit that it has a right to some relief against the petitioner/defendant no.2.

10. I have considered the rival submissions.

11. As per Order I Rule 10(2) of the CPC, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out.

12. In ***Mumbai International Airport (P) Ltd. vs. Regency Convention Centre & Hotels (P) Ltd. & Ors.*** (2010) 7 SCC 417, the Supreme Court stated that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. The impleadment of a party can be on the basis that it is a necessary or a proper party to the proceedings. A necessary party is one against whom the plaintiff seeks relief or in whose absence an effective decree cannot be passed. A proper party is one against whom relief may not be sought but whose presence is essential for the determination of the questions involved in the suit. In ***Mumbai International Airport*** (supra), the Supreme Court has explained the distinction, as follows:

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need

not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

13. This Court in ***Mohinder Jeet Singh Vs. BMW India Pvt. Ltd. and Ors.*** 264 (2019) DLT 155, while relying upon ***Mumbai International Airport (P) Ltd.*** (supra), has held as follows:

"13. The deletion of a party as a defendant in a suit is therefore possible only upon arriving at a determination that the party is neither a necessary nor a proper party to the suit.

14. The allegations contained in the plaint in the present case must be analysed in the context of these principles. *The relief sought in the plaint is for a decree against "the defendants, jointly and severally". To this extent, it is clear that the plaintiff has sought relief against the defendants no. 4 and 5 as well. **The question then is whether he has disclosed a cause of action against the said defendants, entitling him to proceed against them.**"*

14. It appears from a reading of the plaint that the respondent no.1/plaintiff was supplying goods directly to the respondent no. 2/defendant no.1 even though the bills were being raised in the name of the petitioner/defendant no.2. It is also an admitted position that the payments were being made by the respondent no.2/defendant no.1 directly in favour of the respondent no.1/plaintiff in respect of the supplied goods.

15. It is an undisputed position that a cheque of Rs.60,47,218/- and a cheque of Rs.10,00,000/- were issued by the respondent no.2/defendant no.1 in favour of the respondent no.1/plaintiff on 14th March, 2008 and that the

said cheques were dishonoured.

16. A reading of paragraph 15 of the plaint clearly shows that the amounts payable due to non-issuance of C Forms by the petitioner/defendant no.2 to the respondent no.1/plaintiff have not been claimed in the present suit. The amount claimed in the suit corresponds to the amount sought to be paid by way of the dishonoured cheques i.e., Rs.60,47,218/-. In addition, a sum of Rs.31,18,757/- has been claimed towards interest with the rate of 24% per annum. However, the amount of Rs.33,82,155/- payable to the respondent no.1/plaintiff towards the penalty on non-supply of C Forms to the respondent no.1/plaintiff has specifically been ousted from the relief claimed in the plaint. It is clear from the reading of the plaint that the amounts arising on account of non-supply of C Forms were not a subject matter of the suit. In support of the aforesaid, paragraph 19 of the plaint is reproduced hereinbelow:

“19. That the cause of action arose in favour of the Plaintiff Company as against the Defendants for the first time when the Defendant No.1 for and on behalf of his firm approached the Plaintiff Company at its Registered Office at Delhi and requested for supply of pharmaceutical and on 29.09.2005 when the Agreement was executed between the Plaintiff Company and the Defendant No.1 firm. The cause of action further arose on various dates when the Plaintiff Company dispatched the goods to the Defendant Company and raised the invoices between 29.08.2006 to 13.12.2007. The cause of further action arose on each date when the Defendant made payments from time to time to the Plaintiff Company against the purchase of above goods. The cause of action further arose on 19.03.2008 when both the cheques issued by the Defendants in favour of the Plaintiff Company were dishonored. The cause of action further arose

on 27.03.2008 when legal notice was issued by the Plaintiff Company and despite receipt of the legal notice, the Defendants failed to pay the principal outstanding and interest accrued thereon and the cause of action is still continuing.”

From a reading of the aforesaid, it is established that the cause of action was stemming from the non-payment of the principal outstanding amount and interest accrued thereon, amounting to 91,65,975/-. It has to be further borne in mind that the said suit was filed by the respondent no.1/plaintiff under Order XXXVII of the CPC seeking recovery on the basis of the admitted liability in terms of the cheques that were issued to the respondent no.1/plaintiff by the respondent no.2/defendant no.1 on 14th March, 2008. If the said suit did involve recovery of money on the basis of non-issuance of Forms C, the same would not be maintainable as a suit filed under Order XXXVII of the CPC.

17. The respondent no.1/plaintiff and the respondent no.2/defendant no.1 entered into an agreement dated 29th September, 2005, the relevant clauses of which are extracted below:

“2. That the goods will be sold by the First Party to the Second Party or to Sarabhai as may be advised by the Second Party at the rates as may be decided from time to time.

3. That the Second Party shall make payment to the First Party 50% advance along with the Purchase Order and balance 50% payment before delivery of goods; and within 2 days from the receipt of the Intimation from the First Party.

4. That the Second Party or Sarabhai to whom the goods are billed shall submit Form ‘C’ in advance to the First Party, within 3

months of the First Sale; and that the Second Party shall be responsible for deposit of 'C' Form to the First Party failing which to pay 6% difference in Sales Tax.

...

12. That the Second Party shall purchase the goods from the first party on Principal-to-Principal basis and nothing contained in this agreement shall constitute a partnership or an agency relationship between the parties; and the First Party does not authorize relationship between the parties; and the First Party does not authorize the Second Party to make any representation or to incur any liability on behalf of the First Party.”

18. A reading of the aforesaid clauses of the agreement between the respondent no.1/plaintiff and respondent no.2/defendant no.1 clearly demonstrates that the said agreement was on a principal-to-principal basis and the liability to make payment towards the goods supplied was that of the respondent no.2/defendant no.1. Clause 4 of the said agreement specifies that it is the respondent no.2/defendant no.1 who shall be responsible for default in the deposit of C Forms to the respondent no.1/plaintiff, even if the forms could be submitted by the respondent no.2/defendant no.1 or petitioner/defendant no.2. It may also be noted that the petitioner/defendant no.2 was not privy to the said agreement between the respondent no.1/plaintiff and respondent no. 2/defendant no.1 and in light of such express obligations concretized in the said agreement with respect to the liability of respondent no.2/defendant no.1 upon default, no liability on part of the petitioner/defendant no.2 could have been inferred on the basis thereof.

19. Even in the reply filed on behalf of the respondent no.1/plaintiff to the

leave to defend application filed on behalf of respondent no.2/defendant no.1, the respondent no.1/plaintiff denied the specific averment made on behalf of the respondent no.2/defendant no.1 that petitioner/defendant no.2 was liable if there was default/liability arising out of non-payment of tax, arrears of sale tax and that the same had to be settled between the petitioner/defendant no.2 and the respondent no.1/plaintiff. It was further stated in the reply that as per the said Clause 4 of the agreement dated 29th September, 2005, the respondent no.2/defendant no.1 shall be responsible for deposit of C Forms to the respondent no.1/plaintiff, otherwise liable for 6% difference in Sales Tax.

20. In this regard, it also appears that the respondent no.1/plaintiff, who is contesting the suit before the ADJ, has not entered appearance in the present petition and he has been proceeded against *ex-parte* on 20th September, 2021.

21. It appears that the respondent no.1/plaintiff is not interested in insisting upon the impleadment of the petitioner/defendant no.2 in the suit.

22. Therefore, in view of the aforesaid, taking into account the pleadings of the respondent no.1/plaintiff before the Trial Court and the conduct of the respondent no.1/plaintiff before this Court, it is found that neither was any relief sought by the respondent no.1/plaintiff against the petitioner/defendant no.2 nor was there a cause of action pleaded in respect of the petitioner/defendant no.2.

23. The finding of the ADJ that since the letter dated 5th May, 2008, issued by the petitioner/defendant no.2 and asking the respondent no.1/plaintiff to supply particulars for issuance of C Forms, was on record, *prima facie* it was reflected that the petitioner/defendant no. 2 was a proper

party and under obligation or at least was having some express or implied contract to issue the C Forms, is erroneous. From a reading of the Clause 4 of the agreement dated 29th September, 2005, it is apparent that even if the C Forms were to be deposited/submitted by the petitioner/defendant no.2, in the event of default in the issuance of the C Forms, the liability to pay 6% difference in Sales Tax was of the respondent no.2/defendant no.1. Furthermore, the letter dated 5th May, 2008 does not admit any liability undertaken by the petitioner/defendant no.2 for payment of 6% difference in Sales Tax in the event of default in deposit/submission of C Forms.

24. As regards the contention of the counsel appearing on behalf of the respondent no.2/defendant no.1 that the amount of Rs.60,47,218/- included a sum of Rs.22,71,204/- towards Sales Tax, the remaining fact of the matter is that it was the respondent no.2/defendant no.1 who made the aforesaid payment by issuance of cheques to the respondent no.1/plaintiff in respect of the aforesaid amount on 14th March, 2008. Regardless of the aforesaid, it has already been established that as per Clause 4 of the agreement dated 29th September, 2005, it was the respondent no.2/defendant no.1 who was responsible for the payment of 6% difference in Sales Tax in the event of default in the deposit/submission of C Forms.

25. As regards, the contention raised on behalf of the respondent no.2/defendant no.1 of the admission of liability based on the letter dated 27th June, 2009, a bare reading of the said letter shows that there was no admission of the petitioner/defendant no.2 in respect of amount of Rs.27,55,300/-. The said amount had only been noted in the letter to bring out a discrepancy noted in the terms of the legal notice issued by the respondent no.1/plaintiff. In the considered view of the Court, the impugned

order passed by the ADJ is erroneous as it has relied upon the letters written by the petitioner/defendant no.2 with regard to C Forms to dismiss the application filed on behalf of the petitioner/defendant no.2 for deletion from the array of parties to the suit.

26. In respect of the contention of the respondent no.2/defendant no.1 that as per the letter dated 8th January, 2009 issued by the respondent no.1/plaintiff to the petitioner/defendant no.2, it is the liability of the petitioner/defendant no.2 to furnish C Forms, Clause 4 of the agreement dated 29th September, 2005 would be relevant to reiterate that it was the respondent no.2/defendant no.1 who was responsible for the payment of 6% difference in Sales Tax in the event of default in deposit/submission of C Forms. In light of the liability of the respondent no.2/defendant no.1 on account of default in the deposit of the C Forms being couched in express terms in the said agreement, and the respondent no.1/plaintiff's denial in reply to the leave to defend application, the letter dated 8th January, 2009 does not come to the aid of the respondent no.2/defendant no.1 to impose liability on part of the petitioner/defendant no.2, especially in a suit filed under Order XXXVII of the CPC.

27. There is merit in the submission of the counsel for the petitioner/defendant no.2 that the transport receipts referred to by the respondent no. 2/defendant no.1 are of a date after the date on which the dishonoured cheques were issued to the respondent no.1/plaintiff.

28. Therefore, it appears that there was a dispute between the petitioner/defendant no.2 and the respondent no.2/defendant no.1, which led to termination of contract between two of them. However, the *inter se* disputes between the petitioner/defendant no.2 and respondent

no.2/defendant no.1 cannot be agitated in the suit filed by the respondent no.1/plaintiff.

29. During the course of arguments, the counsel for the respondent no.2/defendant no.1 conceded that a separate suit should have been duly filed by the respondent no.2/defendant no.1 against the petitioner/defendant no.2 to establish the liability of the petitioner/defendant no.2 in respect of the amounts recoverable due to the non-deposit of Forms C.

30. The respondent no. 2/defendant no.1 cannot in this manner insist on the petitioner/defendant no.2 being impleaded in the aforesaid suit as the same would amount to expansion of scope of the relief sought in the suit as filed by the respondent no.1/plaintiff.

31. In light of the aforesaid, in the opinion of this Court, the petitioner/defendant no.2 is neither a proper nor a necessary party to the suit. Accordingly, there is a manifest error in the impugned order passed by ADJ, which warrants interference by this Court under Article 227 of the Constitution of India. The only person interested in impleadment of the petitioner/defendant no.2 is the respondent no.2/defendant no.1 in order to avoid/reduce its liability, which may arise under the suit. The impleadment of the petitioner/defendant no.2 is not necessary to decide the issues raised in the plaint.

32. The petition is allowed. The impugned order dated 16th October, 2019 is set aside.

33. The petitioner/defendant no.2 is deleted from the array of parties in the suit.

AMIT BANSAL, J.

NOVEMBER 26, 2021/at