

I. CR-8957-2017 (O&M)
Reserved on : July 15, 2022
Date of Pronouncement: July 28, 2022

II. CR-8946-2017 (O&M)

III. CR-225-2018 (O&M)

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Dalal, Advocate for the petitioner(s)
Mr. M.K. Garg, Advocate for the respondents.

ARVIND SINGH SANGWAN, J.

Prayer in CR-8957-2017 and CR-225-2018 is for setting aside the order dated 6.12.2017 passed by the trial Court, whereby the application of the petitioner(s) for impleading respondent No.2 as

necessary party was dismissed. While, in CR-8946-2017 prayer has been made for setting aside the order dated 6.12.2017 passed by the trial Court, whereby the application under Order 6 Rule 17 CPC for amendment of the plaint was declined.

Since all the above mentioned revision petitions, being arisen out of the impugned order dated 6.12.2017, are, hereby, decided by one common judgment.

Brief facts of the revision petitions are as under :-

CR-8957-2017

The petitioner has invested Rs.6,00,000/- with respondent No.-2-Company as respondent No.1 is the Director, who has come up with a proposal of developing a group of Housing/Commercial/Residential colony. But the respondent-Company failed to launch the project and, therefore, the present petitioner has filed a suit for recovery of Rs.6,00,000/-.

CR-8946-2017

The petitioner has invested Rs.7,00,000/- with respondent No.-2-Company as respondent No.1 is the Director, who has come up with a proposal of developing a group of Housing/Commercial/Residential colony. But the respondent failed to launch the project and, therefore, the present petitioner has filed a suit for recovery of Rs.7,00,000/-.

CR-225-2018

The petitioner has invested Rs.6,00,000/- with respondent No.-2-Company as respondent No.1 is the Director, who has come up

with a proposal of developing a group of Housing/Commercial/ Residential colony. But the respondent failed to launch the project and, therefore, the present petitioner has filed a suit for recovery of Rs.6,00,000/-.

During the pendency of the suit, the petitioner(s) filed an application under Order 1 Rule 10 CPC to array defendant No.2 as a party in the suit. It is stated that defendant No.2 is the Company whereas the defendant No.1 is the Director of the Company, therefore, it is necessary to implead defendant No.2-M/s Shree Dham Developers Private Limited, A-12, Uppel Marble, Mani Majra, Chandigarh as a necessary party so as to enable the Court to come to a definite conclusion. The respondent-defendant No.1 contested this application on the ground that suit can be decided in the presence of defendant No.2-Company and there is no requirement to implead the Company as a party.

The Trial Court vide impugned order, dated 6.12.2017 dismissed the applications on the ground that in the applications it is not mentioned that defendant No.1 is still the Director of the Company or not and merely on the ground that the case is now fixed for the plaintiff's evidence, dismissed the applications.

Counsel for the petitioner(s) has argued that in the suit it is specifically mentioned that it is the defendant-Daya Kishan Gill, who has enticed the plaintiff(s) to give cheques of Rs.6,00,000/- each (plaintiffs- Kehar Singh and Shyam Singh Malik) and cheque of Rs.7,00,000/- (plaintiff-Premwati) issued in favour of M/s Shree Dham Developers Private Limited, which were duly accounted in the account of the Company and were subsequently also reflected in the agreements for the purchase of the land from the owners as per the understanding of development/collaboration agreements. Therefore, the Company is a

necessary party as the payments were made in favour of the Company though defendant No.1-Daya Kishan Gill, being Director of the said Company.

Counsel further for the petitioners has further submitted that in para 6 of the preliminary objections of the written statement, it is submitted by the contesting defendant No.1 that the suit is filed against the Director of the Company, which can be sued in its own name.

It is also stated in para 5 of the written statement that the cheques were in the name of the Company and no amount was paid in person to defendant No.1.

Counsel further submits that in view of the said pleadings, it was necessary for the plaintiffs to implead M/s Shree Dham Developers Private Limited as defendant No.2, which will enable the trial Court to come to a definite conclusion.

Counsel for the petitioners has relied upon an order dated 17.5.2021 passed in CR-125-2022, wherein it is noticed that if the foundation for seeking the necessary relief has already been laid in the original plaint and certain facts have come to the notice of the plaintiff(s)/petitioner(s) after filing of the written statement by the defendant, which prompted the plaintiffs to file the applications, the Courts in order to do substantive justice between the parties can allow the application as the defendant will not suffer any irreparable loss if the amendment is allowed. Counsel for the petitioners submits that, in fact, the petitioners are not making any amendment except impleading the Company as defendant No.2.

Counsel for the respondents has opposed the prayer.

After hearing counsel for the parties and in view of the fact that by allowing the applications to implead defendant No.2 will not change the nature of the case as defendant No.1 is the Director of defendant No.2-Company to whom the payments were made and it came to the notice of the petitioner(s)-plaintiff(s) after filing of the written statements, these revision petitions are allowed, impugned order dated 6.12.2017 is set aside and respondent No.2-M/s Shree Dham Developers Private Limited is ordered to be impleaded as defendant No.2 in the suits.

July 28, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO