



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11721 OF 2018

Arun Dwarkaprasad Karwa

... Petitioner

Versus

**Faredeal Shipping Agencies (Mumbai), Private
Limited, through its authorized representative
Mr. Deepak S. Khamkar & Ors.**

... Respondents

— —
Mr. Amit Singh with Ms. Shivani Deshmukh i/by Abhay Nevagi and
Associates for the Petitioner.

Mr. Prasanna Gupte i/by Ms. Dikshita P. Gupte for Respondent no.1.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 11, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 17th January, 2018, rejecting the petitioner's application for deleting the Petitioner from array of the defendants. The facts of the case are that the Respondent No.1 had filed suit No.417 of 2017 before the City Civil Court against defendant no.1-Company and the Directors being defendant nos.2 to 4. The Petitioner is arrayed as defendant no.4 before the City Civil Court. The relief which has been sought in the suit is a money decree alongwith interest. The claim is founded

on the ground that there was transport services which was provided by the plaintiff to the defendant no.1-Company, as against which invoices were raised which remained outstanding. The defendant no.4 who was an independent executive director, filed notice of motion No.1484 of 2018 under Order 1 Rule 10 (2) of the CPC seeking to be deleted from the array of defendants. This application was opposed by the plaintiff and by the impugned order dated 17th July, 2018 the application came to be rejected.

3. Heard the learned counsel for the parties.

4. Learned counsel appearing for the petitioner submits that the suit has been filed for recovery of the amount from the defendants. The admitted position is that the services were provided to the defendant no.1-Company and the decree if any will be passed against defendant no.1. He would further submit that it is the case of the plaintiff that the defendant nos.2 and 3 are in-charge of regular day-to-day activities of the defendant no.1-company and are responsible and liable for all the affairs of defendant no.1. He has further pointed out the averment in the plaint that the plaintiff has tried to contact with defendant nos.2 and 3 on several occasions but the defendants avoided to make the payment of invoices. He would further submit that the defendant nos.2 and 3 were incharge and

responsible for affairs of the company. He would further submit that alongwith this application seeking deletion he has produced the form no.32 which indicates his designated as non executive director.

5. *Per contra*, learned counsel counsel appearing for the original-plaintiff would contend that the **defendant no.4** was a director at the relevant time and that he has subsequently resigned. He would further contend that the defendant nos.2 and 3 have not appeared in the proceedings despite service of summons and that the decree is sought against all the defendants.

6. Considered the submissions.

7. The trial Court has rejected the application on the ground that the company is distinct and separate legal entity and it acts through the directors who are collectively referred to as Board of Directors. In my view the trial Court ought to have appreciated that even though the decree is sought against all the defendants, the defendant no.1 – Company being a distinct and separate legal entity, the money decree for the services rendered to the defendant no.1 can be sought only against the defendant no.1. The directors do not have any personal liability towards the payment of the invoices for the services which were rendered to the defendant no.1-Company.

8. The trial Court also failed to consider the averments in the plaint itself that the defendant nos.2 and 3 were incharge and responsible for the affairs of Defendant no.1 for day-to-day affairs of the defendant no.1. In the application seeking deletion, it is a specific case of the Petitioner that he was an independent and non executive director and was never involved in the day to day management or affairs of the company. That being so, in my opinion, the **defendant no.4** is neither necessary nor proper party to the proceedings. The power under Order 1 Rule 10 (2) of CPC, is to permit the Courts to delete the parties which are not necessary parties for effective adjudication of the dispute. The trial Court has rejected the application by considering that the defendant no.4 was connected with the affairs of the defendant no.1, however, failed to consider that defendant no.4 is an independent and non executive director.

9. In view of the matter, the petition succeeds and the impugned order dated 17th July, 2018 is hereby quashed and set aside. As consequence, the notice of motion No.1484 of 2018 stands allowed.

(Sharmila U. Deshmukh, J.)

(This Order is corrected pursuant to the Speaking to the Minutes Order dated 28th August, 2023.)