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

Date of decision: 16.11.2023

+ **CM(M) 468/2023 & CM APPL. 13996/2023**

**SHRI KAZI BASHIR RAHAMAN PROPRIETOR OF M/S STAR
HAWAI CENTRE** Petitioner

Through: Ms. Ritika Mitra, Advocate.

versus

SHRI RAMINDER SINGH PROPRIETOR OF M/S J.K POLYMERS
..... Respondent

Through: Mr. Jitesh Talwani, Advocate

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the orders dated 24.11.2022 and 09.02.2023 passed by the Civil Judge-01, West District, Tis Hazari Courts, Delhi ('Trial Court') in CS SCJ No. 438/2021, titled as '**J.K. Polymers v. Star Hwai**'.

1.1. The Trial Court vide order dated 24.11.2022, inter alia, allowed the Respondent's application under Order VI Rule 17 of Code of Civil Procedure, 1908 ('CPC') subject to cost of Rs. 2,000/- to be paid to the Petitioner herein.

1.2. The Trial Court subsequently, vide order dated 09.02.2023 dismissed the Petitioner's application filed under Section 151 of CPC seeking dismissal of suit for non-payment of costs in terms of order dated 24.11.2022.



1.3. The Petitioner is the defendant and the Respondent is the plaintiff. The civil suit has been filed seeking recovery of a sum of Rs. 2,88,321/- along with present and future pendente lite interest.

2. Learned counsel for the Petitioner states that she is aggrieved by the impugned orders since the Trial Court has allowed the Respondent i.e., plaintiff's application under Order VI Rule 17 of CPC without granting an opportunity to the Petitioner i.e., the defendant, to file his reply to the said application. She states that the defendant has substantive objections to the proposed application.

2.1. She states that initially, the original plaint was filed in the name of sole proprietorship i.e., M/s J.K. Polymers. She states that since a proprietorship firm is not a juristic person, the plaint was defective. She states that the affidavit in support of the plaint is non-est as the name of the deponent is mentioned as Mr. Ravinder Singh, whereas the affidavit has been signed by Sh. Pradeep Kumar Soni. She states that as per the record, Sh. Pradeep Kumar Soni has been allegedly authorised vide letter dated 08.08.2021 to file the plaint

2.2. She states that further in the original plaint, the plaintiff had relied upon a legal notice dated 28.09.2020, which has no concern whatsoever with the defendant herein; as is evident from the contents of the said notice.

2.3. She states that the amended plaint taken on record by the Trial Court, is also not maintainable in law since it has been filed in the name of M/s J.K. Polymers, which as per the averments in the plaint is the proprietorship concern of Sh. Raminder Singh. She states that no suit can be instituted in the name of the sole proprietorship i.e., M/s J.K. Polymers, and though it is a formal defect, the plaint in its existing form cannot be maintained in law.



2.4. She states that similarly the Petitioner herein i.e., the defendant, in the amended plaint has been described as M/s Star Hwai alias Star Hawai, the proprietorship concern of Mr. Kazi Bashir. She states that the correct name of the proprietorship firm is M/s Star Hawai Centre. However, she states that the suit filed against M/s Star Hawai Centre as well is not maintainable as it is not a juristic person.

2.5. She states that the Trial Court by not granting an opportunity to the Petitioner to point out these defects has permitted the amended plaint to be taken up on record, which cannot be adjudicated upon since neither M/s Stars Hawai Centre nor M/s J.K. Polymers are juristic persons.

2.6. She states that it is the stand of the Petitioner that he has no commercial relationship with the plaintiff and has never dealt with either Mr. Ravinder Singh or Mr. Raminder Singh, as alleged in the original plaint and the amended plaint respectively. She states that, therefore, the issue of the identity of the plaintiff also needs to be verified by the Trial Court before permitting amendment.

3. In reply, learned counsel for the Respondent states that he relies upon the contents of the application dated 23.11.2022 filed under Order 6 Rule 17 CPC. He states that there is no error in the impugned orders and he disputes the submissions of the Petitioner i.e., the defendant.

4. This Court has heard the learned counsel for the parties and perused the record.

5. This Court is of the opinion that there is merit in the submissions of the Petitioner with respect to the defect of institution of the suit in the names of a sole proprietorship concern(s) and not the individual i.e., proprietor of the firm itself.



6. This Court has perused the affidavit dated 20.01.2021 filed in support of the (unamended) original plaint; and as rightly pointed out by the Petitioner, the name of the Respondent's proprietor in the said plaint is mentioned as Mr. Ravinder Singh. Though, undoubtedly, all typographical errors should be permitted to be corrected; especially when the plaint is at an initial stage, however, such corrections should be permitted after giving a reasonable opportunity to the defendant to make its submissions.

7. There is also merit in the submission of the Petitioner that suit cannot be maintained by or against the sole proprietorship firm as it is not a juristic person. This suit has to be filed by the proprietor in his/her own name as the plaintiff and against the proprietor in his/her own name as the defendant.

8. In this Court's considered opinion, in the facts of this case, if this suit as per the amended plaint is permitted to continue, not only will it result in a waste of judicial time of the Trial Court but it will also not bear any results for the Respondent i.e., the plaintiff. In this regard it would be instructive to refer to the judgment of this Court in *M/s Arora Enterprises v. M/s Vijay Power, 2015 SCC OnLine Del 9644*, wherein this Court has held that so far as the proprietary concern is concerned, it does not have any legal status and in case a proprietary concern wants to file a suit, it has to be in the name of the proprietor and not in the business name.

9. In this view of the matter, this Court is of the opinion that the Trial Court ought to have granted an opportunity to the Petitioner herein to file his reply to the application filed under Order VI Rule 17 CPC, to enable the defendant to make his submissions and present the aforesaid objections including the identity of the plaintiff.

10. In view of the aforesaid facts, the impugned orders dated 24.11.2022



and 09.02.2023 are set aside.

11. The defendant herein is directed to file its reply to the Respondent's application filed under Order VI Rule 17 of CPC, within a period of two (2) weeks. Rejoinder, if any, be filed by the Respondent herein within two (2) weeks thereafter.

12. The Trial Court is requested to hear and decide the plaintiff's application filed under Order VI Rule 17 of CPC, afresh after duly considering the submissions of the Petitioner herein.

13. With the aforesaid directions, the present petition is allowed. Interim direction issued vide order dated 22.03.2023 stands vacated.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 16, 2023/msh/aa