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

Date of decision: 14.12.2023

+ CM(M) 1760/2023 & CM APPL. 55777/2023 CM APPL. 55780/2023

APOORV JAIN

..... Petitioner

Through: Mr Anoop Prakash Awasthi and Ms
Parthvi Ahuja, Advocates

versus

PRAYAG POLYTECH PVT. LTD. & ORS.

..... Respondents

Through: Mr. Vivek Sura and Mr. Aashish
Dutta, Advocates
Ms Prapti Singh, Adv. for R-2 and 3

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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):

CM APPL. 55781/2023, CM APPL. 55778-79/2023(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 1760/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 04.10.2023 passed by ADJ-04, New Delhi District, Patiala House Court, New Delhi ('Trial Court'), in CS No. 264/2019, titled as **Prayag Polytech Pvt. Ltd. v. Bonlon Traders**, whereby the Trial Court dismissed the applications of the defendants filed under; (i) first under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC') seeking deletion of defendant no.3 i.e., the Petitioner herein and (ii) second under Order VII



Rule 10 of CPC seeking return of plaint on the ground of lack of territorial jurisdiction.

1.1. The Petitioner herein is the defendant no.3. The Respondent No.1 is the plaintiff, Respondent No.2 is the defendant no.2 and Respondent No.3 is the defendant no.1 before the Trial Court.

1.2. The Respondent No.1 filed a civil suit (CS No. 264/2019) for recovery of Rs. 32,10,274/- on 18.03.2019 on the assertion that Respondent No. 3 is a partnership firm constituting its two (2) partners.

1.3. The defendants filed a common written statement in the said suit on 08.07.2019, and averred that nothing is due and outstanding from M/s Bonlon Traders to M/s Prayag Polytech Pvt. Ltd. It was further averred in the said written statement that M/s Bonlon Traders (i.e., defendant No. 1) is not a partnership firm but it is a proprietorship firm under the proprietorship of Mr. Anil Kumar Jain i.e. defendant no.2 and therefore name of the Petitioner herein i.e., defendant no.3 should be deleted from the array of parties.

1.4. Thereafter, the defendant no.3 filed an application under Order I Rule 10 (2) of CPC on 06.06.2019, which was dismissed by the Trial Court vide the impugned order.

2. The learned counsel for the Petitioner states that since the suit has been filed for recovery of money advanced to defendant no.1 i.e., M/s Bonlon Traders a sole proprietorship concern of defendant no.2, the Petitioner herein i.e., defendant no.3 is not a necessary or a proper party.

2.1. He states that in the common written statement filed by defendant nos. 1 and 2, it has been categorically pleaded that defendant no.1 is a sole proprietorship concern and not a partnership firm as pleaded in the plaint.



He states that in the replication, the plaintiff has not traversed the said pleading.

2.2. He states that the Petitioner has placed on record at Annexure P-7 and P-8 with this petition, documents issued by third parties such as bank and statutory authority which record that defendant no.1 is the sole proprietorship concern of defendant no.2.

3. In reply, learned counsel for Respondent No.1, i.e., the plaintiff states that the Petitioner has come to this Court with unclean hands.

3.1 He states that the Petitioner on 31.10.2023 made an incorrect statement before this Court that there is no partnership concern by the name of M/s Bonlon Traders. He states that as per the information available on the website of Ministry of Corporate Affairs ('MCA'), there exists BONLON Enterprises Limited Liability Partnership ('LLP'); and the Petitioner herein is the designated partner in the said firm along with his father i.e., defendant no.2.

3.2 He states that as per the information available in MCA, Petitioner and defendant no. 2 have also incorporated a company by the name of BONLON Petrochem Pvt. Ltd. ('company'). He states that Petitioner is a director in the said company.

3.3 He states that the registered address of the LLP and defendant no.1, the sole proprietorship concern is same and he also relies upon the email address of the LLP available on MCA website which is common with defendant no. 1. He states that the email address of LLP is bonlontraders@gmail.com.

3.4 He states that as set out in the plaint and more specifically at paragraph '7' therein, both defendant nos. 2 and the Petitioner herein held



out to the plaintiff that defendant no. 1 is the partnership firm and the said two (2) persons are its partners. He states that the loan was advanced by the plaintiff acting upon the said representation made to it and therefore, the suit against defendant no. 3 is duly instituted.

3.5 He states that the documents filed with this petition at Annexure 'P-7' and 'P-8' have not been filed before the Trial Court even though the written statement was filed in 2019. He states that therefore, there is no evidence on record before the Trial Court that defendant no. 1 is a proprietorship concern.

3.6 He states that the suit is at the stage of recording of plaintiff evidence and though plaintiff's witness-1 'PW-1' was examined-in-chief on 08.08.2023, the matter has thereafter been repeatedly adjourned at the instance of the defendants.

4. This Court has considered the submission of the learned counsel for the parties and perused the record.

4.1. This Court at the first hearing dated 31.10.2023 had enquired from the Petitioner with respect to existence if any, of a partnership concern between defendant nos. 2 and defendant no. 3, in view of the assertion made in the plaint at paragraph '7' therein. The counsel for the Petitioner had made a categorical statement before this Court that there exists no partnership concern by the name of 'M/s Bonlon Traders'.

4.2. The Petitioner admits the documents produced by the Respondent No.1 during the course of hearing showing existence of BONLON Enterprises LLP and the fact that Petitioner and defendant no. 2 are designated partners in the said LLP.



4.3. In the opinion of this Court, the Petitioner misled this Court on 31.10.2023 while making a statement as regards non-existence of a partnership concern.

5. The Petitioner sought to justify the non-disclosure and the statement made on 31.10.2023 by contending that the name of the LLP is BONLON Enterprises LLP, whereas, the query of the Court was with respect to 'M/s Bonlon Traders'.

5.1 It is evident to this Court that the Petitioner is indulging in hair splitting and deflecting the spirit in which the question had been posed to him at the hearing dated 31.10.2023. In the spirit of the question posed by this Court, the Petitioner should have disclosed existence of the LLP as it uses the same trading name 'BONLON'.

5.2 This Court is therefore satisfied that the Petitioner withheld the existence of the LLP and BONLON Petrochem Pvt. Ltd. from this Court as the said facts evidence the contention of the plaintiff that Petitioner and defendant no.2 have been holding out to the public that they are partners working together in business.

6. The Trial Court in the impugned order has while dismissing the application rightly held that the liability of the Petitioner would essentially be a matter of trial.

6.1. The plaintiff in the plaint at paragraph '7' has categorically pleaded that it was led to believe that the defendant no. 1 was the partnership concern of defendant no.2 and the Petitioner.

6.2. Section 115 of the Evidence Act, 1872 recognizes the principle of the rule of estoppel whereby a person, who though not a partner may also



become liable as if he is a partner, to a person whom he has led to believe that he is a partner and to act on such belief.

6.3. In the facts of this case, (i) the existence of defendant no. 1 i.e., the proprietorship firm, the LLP and the company, wherein, the common trading name is BONLON; (ii) both Petitioner and defendant no. 2 are the person in-charge of these entities and; further (iii) all the three (3) entities are registered at the common physical address and using a common email address, is evident from the record. All these factors at this stage prima facie show that the averments in the plaint that plaintiff was led to believe by the defendant no. 2 and 3 that they are partners in defendant no. 1 is plausible.

6.4. The documents filed at Annexure 'P-6' and 'P-7' were admittedly not filed before the Trial Court and are also not documents which were made available to the plaintiff at the relevant time of transaction.

6.5. This Court therefore finds no infirmity in the order of the Trial Court. This petition is without any merit and suffers from the vice of suppression. Accordingly in view of the aforesaid analysis, the petition is dismissed with costs of Rs. 15,000/- payable to the Respondent No.1 within two (2) weeks, failing which the defence of the Petitioner will be struck off.

7. Pending application(s) if any stands disposed of.

8. The documents pertaining to the LLP and the company, handed over by Respondent No.1, as downloaded from the website of the MCA are taken on record.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 14, 2023/sk