IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

119 **CR-570-2024 (O&M)**
Date of Decision:08.08.2024.

Tavish Garg & another .... Petitioners

Vs.

M/s Vansh Knitwears & another .... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Himanshu Sharma, Advocate for the petitioners.

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SUKHVINDER KAUR, J.

The instant revision petition has been filed by the petitioners against the order dated 22.09.2023 (Annexure P-1) passed by Civil Judge (Junior Division), Ludhiana, whereby application under Order 1 Rule 10 CPC filed by the petitioners/defendants No.1 and 2 has been dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the petitioners/plaintiffs filed a suit for recovery against the defendants for a sum of Rs.3,90,083/- (including interest) which was found outstanding against the defendants as on 23.04.2021, as per the statement of accounts maintained by the plaintiffs. During pendency of the aforesaid suit, an application under Order 1 Rule 10 CPC for striking out names of defendants No.2 and 3 was filed, alleging therein that defendants No.2 and 3 have been erroneously made party in the suit and they do not become personally liable for any debt by defendant No.1 – Company, merely for the reason of being the Directors of defendant No.1 – Company. It was also

alleged that the defendants No.2 and 3 cannot be held personally liable as the company is an artificial person and they were not involved in the said alleged transactions and had never dealt with the plaintiffs in any of the transactions during the course of directorship of defendant No.1 – Company. There was no privity of contract between the plaintiffs and defendants No.2 and 3. It was submitted that they are former directors of defendant No.1 – Company and defendant No.2 had resigned and was relieved from defendant No.1 – Company w.e.f. 12.07.2021 and defendant No.3 had resigned and was relieved from defendant No.1 – Company w.e.f. 08.03.2021 i.e. prior to institution of the present suit on 25.08.2021. It was alleged that they are not the necessary parties for adjudicating the controversy in the present case.

3. In reply to the said application, it was submitted by the plaintiffs/respondents that since appearing in this case on 14.12.2021 the defendants have been taking adjournments on one pretext or the other, without filing the written statement, within the stipulated period of 90 days. It was alleged that defendants No.2 and 3 have been personally dealing with the plaintiffs in day-to-day conduct of the business and liability of the defendants was joint and several. It was denied that defendants No.2 and 3 had resigned and were relieved from defendant No.1 – Company prior to institution of the suit.

4. After hearing learned counsel for the parties and perusing the record, the learned trial Court dismissed the application filed by the revision petitioners under Order 1 Rule 10 CPC vide the impugned order dated 22.09.2023 (Annexure P-1). Hence, aggrieved against the said order, the

petitioners have knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the petitioners has contended that the impugned order has been passed by the trial Court without appreciating the facts and without applying the judicial mind. The petitioners being the former Directors of defendant No.1 – Company, which is presently under the Corporate Insolvency Resolution Process since 24.11.2022, cannot be made personally liable for any debt of the company, allegedly contracted during their directorship. The petitioners had not dealt with the respondents/ plaintiffs in any of the alleged transactions during the course of their directorship and there was no privity of contract between the respondents/ plaintiffs and petitioners/defendants No.2 and 3. He has further contended that the plaintiffs have failed to specify the particular period of time during which the alleged cause of action arose and the sole intention of the plaintiffs is to harass the petitioners. Petitioners No.1 and 2 have resigned from defendant No.1 – Company much prior to institution of the suit and they are left with no responsibility towards third parties for any debt contracted by defendant No.1 – Company. He has argued that DIR-12 forms are public documents and are inconvertible piece of evidence showing their cessation from the post of Directors in defendant No.1 – Company prior to institution of the suit. He has urged that corporate veil of a company can be lifted only when it is proved that a Director is involved in some fraudulent activity and without explaining alleged involvement of a Director in the said transaction, the corporate veil of the Company cannot be lifted. He has

submitted that presence of petitioners is not required for adjudicating the dispute between the plaintiffs and defendant No.1 – Company and they are not necessary and proper parties and their names are liable to be deleted from the array of parties. To buttress his contentions, he has relied upon **Narinder Singh Vs. Union of India & others, 2019 (367) ELT 775** and **Tristar Consultants Vs. M/s Customer Services India Pvt. Ltd. & another, 2007 AIR (Delhi) 157.**

6. I have heard learned counsel for the petitioners and have gone through the relevant record.

7. Order 1 Rule 10(2) CPC reads as follows:-

> "***Court may strike out or add parties****- 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, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

8. Thus Sub Rule (2) of Rule 10 Order 1 CPC permits a Court, at any stage of proceedings either upon or without application of either party to strike out a person improperly joined as a defendant.

9. The present suit is a suit for recovery of an amount of Rs.3,75,080/- (including interest) which as per statement of accounts maintained by the plaintiffs was found outstanding against the defendants as

on 23.04.2021.

10. The stand taken by the petitioners is that they are former directors of defendant No.1 – Company and defendant No.2 had resigned and was relieved from defendant No.1 – Company w.e.f. 12.07.2021 and defendant No.3 had resigned and was relieved from defendant No.1 – Company w.e.f. 08.03.2021 i.e. prior to institution of the present suit on 25.08.2021. It has also been asserted that as per the settled law the petitioners even being Directors cannot be held personally liable for any debt of defendant No.1 – Company.

11. Though the exact details of the transactions have not been mentioned in the plaint, but in the reply to the application under Order 1 Rule 10 CPC, it has been submitted by the plaintiffs/respondents that these transactions relate to period when defendants No.2 and 3 (petitioners herein) were Directors of defendant No.1 – Company. It has been specifically alleged in the plaint as well as in the reply to the aforesaid application that the petitioners have personally dealt with the plaintiffs during the course of business transactions. There is specific reference in the plaint that cheque No.068449 dated 26.02.2021 was dis-honoured by the bank on presentation vide memo dated 23.04.2021 with the remarks 'payment stopped by drawer' and when the plaintiffs approached the defendants/petitioners and apprised them about the fate of the cheque, they felt sorry and requested the plaintiffs not to take any action against them and assured the plaintiffs to make the payment of the cheque amount in cash, but even thereafter despite repeated demands and requests of the plaintiffs, no payment was made to the

plaintiffs and rather with prior dishonest and fraudulent intentions, the defendants got expired limitation period for service of notice under Section 138 of the Negotiable Instruments Act upon the defendants.

12. The respective pleadings of the parties are required to be proved by leading cogent evidence. It is also a matter of evidence that the amount allegedly outstanding is pertaining to which period of transactions. So at this stage respondents No.2 and 3 cannot be outrightly let off by deleting their names from array of respondents. Presence of defendants No.2 and 3 is necessary to enable the Court to effectively adjudicate and settle the issues involved in the present suit.

13. So far as, the case law referred by learned counsel for the petitioners is concerned, the same is of no help to him, the same being distinguishable from the facts of the instant case.

14. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

15. Pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

08.08.2024.
harjeet

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No