



2024:DHC:5860



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

% **Date of order: 25<sup>th</sup> July, 2024**

+ **C.R.P. 13/2023**

**INDIAN FINANCE GUARANTY LTD** .....Petitioner

Through: **Mr. C. P. Malij, Advocate**

versus

**SURENDER SINGH** .....Respondent

Through: **Appearance not given**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

- “(i) allow the present revision petition;*
- (ii) Call for the trial Court Record in Civil Suit no. CS/2909/2017 pending trial Before the Sh. Ajay Gulati-II, Ld. ADJ-1 (Central), Tis Hazari*
- (iii) set aside the impugned order dated 14.09.2022 passed by the Ld. Trial Court and consequentially, order for the deletion of the petition from the Civil Suit no. CS/2909/2017 pending trial Before the Sh. Ajay Gulati-II, Ld. ADJ-1 (Central), Tis Hazari;”*

2. Heard.



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3. The respondent herein had filed a suit for declaration and mandatory injunction before the Rohtak District Court, Delhi for an alleged transfer of Rs. 18,00,000/- to the petitioner company, however, the said suit was later converted to the recovery suit and subsequently returned to the respondent due to non-conferment of the jurisdiction to the Rohtak District Court, Delhi.

4. Thereafter, the respondent filed a similar suit bearing no. 2909/2017 before the Tis Hazari Court, Delhi for the same reliefs. During the pendency of the said suit, the petitioner filed an application under Order 1 Rule 10(2) r/w Section 151 of the Code of Civil Procedure, 1908 ('CPC' hereinafter) for its deletion from the suit.

5. The above said application was dismissed by the learned Trial Court *vide* order dated 14<sup>th</sup> September, 2022 ('impugned order' hereinafter) and it was held that the position and relevance of the parties can only be decided at a later stage.

6. Aggrieved by the same, the petitioner has approached this Court by way of filing the instant revision petition.

7. The learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in dismissing the application and the same was done without application of the judicial mind.

8. It is submitted that the petitioner entity's legal status is different from the entity against which the relief is being sought and therefore, the learned Court below ought to have allowed the application under Order 1 Rule 10(2) for deletion of the petitioner from the array of parties.



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9. It is submitted that the learned Trial Court failed to appreciate that there was a specific bar on the entity to trade in demat and commodities derivatives before the year 2017 and therefore, the petitioner company could not have traded the alleged transfer amount due to the said bar.

10. It is submitted that the learned Trial Court erred in terming the petitioner as a proper party without any sound reasoning and therefore, the impugned order is liable to be set aside.

11. It is submitted that the learned Trial Court overlooked the fact that the reliefs prayed by the respondent are against the entity namely IFGL commodities and not the petitioner, therefore, even if the petitioner is required to be summoned to give testimony, there is no need to formally add it as a party in the suit.

12. It is submitted that the learned Trial Court erred in not appreciating that the petitioner does not have anything to do with the alleged transfer amount and therefore, the petitioner is not required to be made a party to the suit.

13. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the learned Court below rightly adjudicated the application and held the petitioner to be a proper party to the suit.



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15. It is submitted that the learned Court below appreciated the material on record and the evidence provided by the petitioner, however, held the same to be dealt with at a proper stage.

16. It is submitted that the revisional powers of this Court are limited to the extent of correcting the jurisdictional errors made by the Court below and therefore, the grievance of the petitioner may not be dealt with by this Court in the instant revision petition.

17. In view of the foregoing submissions, the learned counsel for the respondent submitted that the instant petition be dismissed.

18. Heard the learned counsel for the parties and perused the records.

19. It is the case of the petitioner that the impugned award has been passed by the learned Court below by overlooking the important factors and since the petitioner entity is different than the entity to whom the amount has been transferred, there is no need for the petitioner to be added in array of parties.

20. In rival submissions, the above said contentions have been opposed by the learned counsel of the respondent by stating that the learned Trial Court deemed it appropriate to term the petitioner as the proper party and therefore, the petitioner cannot seek deletion from the array of parties.

21. In view of the same, the limited question for adjudication before this Court is whether the learned Court below erred in law by dismissing the application filed by the petitioner for its deletion from the suit.

22. Before delving into the same, this Court deems it imperative to reiterate that the revision powers conferred to this Court are limited to the



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aspect of correcting the jurisdictional errors on part of the learned Court below and therefore, this Court cannot get into the merits of the issue contested between the parties as the same is beyond the scope of powers conferred to this Court under Section 115 of the CPC.

23. Now adverting to the case at hand, *vide* impugned order, the learned Court below dismissed the application of the petitioner and held as under:

*“8. Order 1 Rule 10 (2) of the CPC empowers the Court to strike out or add parties at any stage of the proceedings either upon or without the application of any party however the test as to whether the party is required to be added or delete is that the presence of such party is necessary to enable the Court effectually and completely adjudicated the question involves in the said suit.*

*9. In the celebrated judgment of Hon'ble Supreme Court of India in the case title as **Aliji Momonji & Co. Vs Lalji Mavji; 1996 5 SCC 379**, the Hon'ble Supreme Court of India has observed that where the presence of the party is necessary for complete effective adjudication out of the dispute, no relief is sought, then he is a proper party and the necessary party is the one without whose presence complete and effective adjudication of the dispute can be made and no relief can be granted.*

*10. In the judgment of **Ramesh Hiranand Kundanmal vs Municipal Corporation of Greater Bombay & Ors 1992 (2) SCC 524**, the Hon'ble Supreme Court, while interpreting Order 1 Rule 10 (2) CPC has observed as under:-*

*5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only*



*those persons as defendants against whom he wishes to proceed though under Order I Rule 3, to avoid multiplicity of suit and needless expenses, all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.*

*6. Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.*

*10. The power of the Court to add parties under Order I Rule 10, C.P.C, came up for consideration before this Court in Razia Begum (supra). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial Jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person*



*may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to movable or immovable property.*

*13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.*

*14, It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.*



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11. On the basis of the aforesaid parameters, this Court has gone through the pleadings and the documents and it shows that initially the plaintiff has filed the present suit seeking recovery of Rs 18 lakhs against Indian Finance Guaranty Ltd. In the plaint the plaintiff has stated that the plaintiff has deposited Rs 18 Lakhs into his own account and the defendant company got this amount transferred in its control in the M.I.D. Code No Rh01 on 05.01.2011 from his account No 60058593052 and assured the plaintiff that his account would be used as per the offer and requirement of the plaintiff to deal in business with the defendant.

12. Thereafter, the plaintiff reconsidered the matter and could not understand the assurance given by the defendant company when the company transferred whole of the amount in its favour instead of Rs 15 Lakhs as agreed in mutual understanding so the plaintiff neither visited the office nor made any signature on the papers to start his business dealing and since the plaintiff could not understand the system of dealing of the business with the defendant and therefore he did not make any request to start the dealing in the business with the defendant after the deposition of the said amount and thus the plaintiff sought refund of the amount on 15.06.2012 and When the same was not returned the plaintiff filed the present suit.

13. It is a matter of record that after filing of WS by the defendant no 1, the plaintiff got to know that the defendant no 1 i.e. Indian Finance Guaranty Ltd and IFGL Commodities Pvt Ltd are two separate entity and therefore the plaintiff filed an application under order 1 Rule 10 CPC seeking impleadment of IFGL Commodities Pvt Ltd and the said application was allowed vide order dt 21.11.2019 and the IFGL Commodities Pvt Ltd was impleaded as defendant no 2 in the present suit. It is a matter of record that since thereafter the plaintiff has not taken any steps to serve the defendant no 2.

14. Ld Counsel for the plaintiff have himself relied upon documents which he has stated to have obtained under the RTI



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*filed with the Union Bank; of India and the perusal of the said documents filed by the plaintiff clearly shows that the account number of defendant no 1 & 2 are different and the amount of Rs 18 Lakhs for which the present suit has been filed, have been credited into the account of IFCL Commodities.*

*15. Perusal of the master data, which has been filed on record by the defendant no 1 in respect of defendant no 1 & 2, clearly shows that not only the defendant no 1 & 2 are two different entity having being registered under their distinct CIN number but the registered address of both the companies is different.*

*16. However, it is relevant to mention here that a closer scrutiny of the said master data shows that the defendant no 2 has been incorporated on 29.10.2012 whereas the defendant no 1 has been incorporated on 01.12.1992 and as such this court is unable to fathom as to how the amount of Rs 18 lakhs could be credited into the account of a company on 05.01.2011 when the said company (i.e. defendant no 2), who is alleged to be beneficiary of the said amount has come into existence only on 29.10.2012.*

*17. During the cause of arguments, it has not been disputed by the Ld Counsel for defendant no 1 that before the IGFL Commodities was incorporated, both the entities i.e. defendant no 1 & defendant no 2 were owned and controlled by same set of persons.*

*18. While dealing with an application under Order 1 Rule 10 (2) CPC, the Court not only has to see whether a party is necessary party but has also to see that such a party is a proper party whose presence is required for the just decision of the case.*

*19. This court is thus of the considered opinion that though the defendant no 1 may not be a necessary party, though the same has to be seen only after recording of the evidences, but is surely a proper party since its presence is required for the just decision of this case. Hence, the application filed by the*



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*defendant no 1 seeking deletion is without any merits and is hereby dismissed.”*

24. Upon perusal of the impugned order, it is made out that the learned Trial Court dealt with the question of what constitutes a proper and necessary party. While doing so, the learned Court below also referred to the judicial dicta rendered by the Hon’ble Supreme Court in this regard.

25. At paragraphs 16 of the impugned order, the learned Trial Court duly noted that the defendant no.2 (before the Trial Court) was incorporated in the year 2012 and since the alleged transfer was done in the year 2011, the defendant no.2 cannot be held to be the beneficiary of the same.

26. Furthermore, in the subsequent paragraphs, the learned Court below also noted that both the entities were owned and controlled by the same person therefore, raising doubts regarding the actual beneficiary of the transferred amount. In view of the said findings, the learned Court below deemed the petitioner as the proper party to the case.

27. The rule regarding the necessary and proper party is clear and been discussed by the Hon’ble Supreme Court and this Court time and again.

28. In ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***(2010) 7 SCC 417, the Hon’ble Court had discussed the principle and held that the plaintiff, being *dominus litis*, has the right to choose the persons against whom to litigate. Consequently, a person cannot be compelled to be sued if the plaintiff does not seek any relief against them. However, this general rule is subject to the provisions of



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Order 1 Rule 10(2) of the Code of Civil Procedure (CPC), which allows for the impleadment of necessary or proper parties.

29. In the above said case, the Hon'ble Court also discussed the principle of proper and necessary parties where the Hon'ble Court deemed a necessary party as someone whose absence would prevent the court from passing an effective decree. If a necessary party is not impleaded, the suit itself is liable to be dismissed as a relief cannot be granted without addition of the necessary party.

30. On the aspect of proper party, the Hon'ble Court explained that a proper party is someone whose presence would enable the court to completely and effectively adjudicate upon all matters in dispute, even though no relief may be sought against them. Although a proper party is not essential for passing a decree, their involvement in the case aids the courts in the comprehensive resolution of the case.

31. The criteria for adding a party in a suit is that the court can add a necessary party if their absence would prevent an effective decree from being passed. In the case of proper parties, the court may add them if their presence would aid in the effective and complete adjudication of the dispute. However, the court may refuse to add a proper party if their inclusion would alter the nature of the suit or introduce a new cause of action. The decision to add a proper party is based on the specific facts and circumstances of each case.



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32. In light of the aforesaid discussion, it is clear that the Courts are empowered to add/delete a party to a suit if a said party is deemed to be a necessary party or proper party.

33. In the instant case, the findings by the learned Trial Court in the impugned award raises doubts regarding the authenticity of the claims made by the petitioner herein and therefore, this Court does not find any compelling reasons to interfere with the order passed by the learned Court.

34. In any case the dispute regarding the relevance of the petitioner can be looked into by the learned Trial Court at the right stage and therefore, the same need not be done by this Court by exercising its revision powers.

35. In view of the foregoing discussions, this Court does not find any force in the arguments of the learned counsel for the petitioner to interfere with the impugned order dated 14<sup>th</sup> September, 2022 and therefore, the same is hereby upheld.

36. Accordingly, the present petition is dismissed along with pending applications (if any).

37. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**JULY 25, 2024**  
**gs/av/sm**

*Click here to check corrigendum, if any*