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

% ***Date of decision: 12th July, 2024***

+ **CM(M) 2906/2024**

JOGY SCARIA ADVOCATEPetitioner

Through: **Ms. M. Priya, Advocate.**

versus

NISSAN MOTORS INDIA PVT LTD AND OTHERS

.....Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 38693/2024 (exemption)

Exemption allowed subject to all just exceptions.

CM(M) 2906/2024

1. Present petition has been filed by plaintiff, who is aggrieved by order dated 22.05.2024 whereby name of defendant No.1 Company has been deleted from the array of parties.
2. The factual matrix of the case has been captured in the impugned order in para 2 which reads as under:-

“2. The factual matrix of the suit as per plaintiff is that the plaintiff had purchased a car from the defendant no .2 by exchanging his old car. That at the time of exchange, the plaintiff has provided with a certificate of surrender/ Delivery receipt and the necessary papers required for the transfer i.e. Form 28 and Form 30 and the defendant no. 2 assured the plaintiff that the said vehicle/old car



will be transferred in the name of defendant no. 2 within 15 days from the date of delivery. That on 02.05.2023, the plaintiff received a call from one Sh. Aman Kumar Mandai i.e. defendant no. 4 that he had purchased the said old car which was exchanged by the plaintiff and the defendant no. 4 demanded the driving license of the plaintiff for renewal of insurance policy. That the ownership of the has not been transferred till date and the defendant no .4 is using the car from last 3 years. That the plaintiff tried to contact defendant no. 2 but came to know that defendant no.2 has closed down the showroom and their dealership has been terminated by defendant no.1. Hence, plaintiff has filed a suit for declaration and specific performance for declaring that the plaintiff is not the owner of that old car sold by the plaintiff and for transfer of that car in the name of present lawful owner or for cancellation of registration of the said old car.”

3. After the summons were issued, defendant No.1 appeared before the learned Trial Court. Besides filing written statement, it also moved an application under Order I Rule 10 CPC read with Section 151 CPC praying that it's name be deleted from the array of the parties. It was moved on the premise that no relief had been sought against defendant No.1 and that there was no cause of action qua defendant No.1. It was also stressed before the learned Trial Court that there was no privity of contract of any kind whatsoever between them and the transaction, as alleged in the plaint, had taken place between the plaintiff and defendant No.2.

4. Learned Trial Court acceded to such request and finding that defendant No.1 was not a necessary party, struck off and deleted its name from the array of parties.

5. According to Ms. M. Priya, learned counsel for the petitioner though no specific relief had been sought from defendant No.1, but



for all practical purposes, defendant No.1 is also a necessary and proper party. She submits that the requisite forms for the purposes of transfer of the vehicle continue to be in possession of defendant No.1 and, therefore, without its presence before the learned Trial Court, it will be very difficult for the plaintiff to get any effective relief.

6. It will be imperative to see as to what kind of prayer has been made by the plaintiff in his suit.

“a) pass an order declaring that the plaintiff is not the owner of the SUNNY Car with registration number UP14 BP 9234 from 26.08.2018, the day in which the vehicle was delivered/surrender to the defendant No.2;

b) pass an order declaring that the plaintiff will not be liable for any accident or negligence caused by any driver of the SUNNY Car with registration number UP14 BP 9234 from 26.08.2018, the day in which the vehicle was surrender to the defendant No.2; and

C) pass a decree for Specific Performance directing the defendant No.3 to transfer the ownership of the SUNNY Car with registration number UP14 BP 9234 to the name of the defendant No.2;

Or in the alternative

Pass a decree for Specific Performance directing the defendant No.3 to transfer the registration of vehicle, SUNNY Car with registration number UP14 BP 9234 to the present lawful owner of the vehicle and carry out the necessary changes in the official records maintained by the defendant no.3, and;

Or in the alternative

pass a decree directing the defendant No.3 to cancel the registration of the vehicle, SUNNY Car with registration number UP14 BP 9234 if no request for transfer of the registration of the vehicle is made by the defendant No.2 or any other lawful owner, d) To pass an Order allowing the Plaintiff to realize the cost of the Suit from the Defendant No.2;”



7. A bare perusal of the averments made in the plaint would indicate that the prime grievance of the plaintiff/petitioner, is to the effect that when he had purchased a car by exchanging his old car, he was assured by defendant No. 2 that his such “old car” would be transferred in the name of defendant No. 2 within 15 days.

8. However, when plaintiff received a call from defendant No. 4 that he had purchased above said “old car” and he made demand of the driving licence of the plaintiff for renewal of insurance policy, the plaintiff felt cheated to the extent that defendant No. 2, without his knowledge and consent, could not have sold the above car to third party. According to plaintiff, the old car was handed over to defendant No. 2 with trust and belief that the ownership would be transferred in the name of defendant No. 2 only. It was in the aforesaid backdrop that the present suit has been filed.

9. As far as sale of such old car (SUNNY Car Diesel ‘UP 14 BP 9234’) is concerned, the privity of Contract is between the plaintiff and defendant No. 2. Merely, because defendant No. 2 happens to be dealer of defendant No. 1, it cannot be assumed that defendant No. 1 is also a necessary party or proper party herein.

10. Defendant No.1 is merely engaged in marketing, selling and servicing of Nissan Brand of vehicles and has no role with respect to registration or transfer of ownership in case of exchange or resale of old car. This was in the exclusive domain of defendant No. 2.



11. As already noticed above, no relief of any kind has been sought from Defendant No. 1 and the grievance of the plaintiff is found to be against defendant No. 2 who, according to the plaintiff, has sold the car to defendant No. 4 in an un-authorised manner.

12. In view of the above, it is very much evident and manifest that defendant No.1 is not a necessary party from any angle whatsoever. Admittedly, the plaintiff is *dominus litis* of his suit but that does not mean that he can rope in anyone as a defendant in such suit.

13. Learned Trial Court has, after appreciating all the facts and after assessing the nature of controversy involved in the present suit, rightly allowed the application moved by defendant No.1 under Order I Rule 10 CPC.

14. Finding no substance and merits in the present petition, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

JULY 12, 2024
st/sw