



2024:DHC:6756-DB



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

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Date of Decision: 28.08.2024

+ **FAO (COMM) 258/2023, CM Nos.66512/2023 & 66514/2023**

RENU BAJAJ & ANR.

.....Appellants

Through: Mr. Avi Singh, Mr. Puneet Bajaj, Ms.
Jyoti Nayak, Ms. Priyanka Kumari &
Mr. Ashutosh Jain, Advs.

Versus

CONSILIUM AUTOMATION AND FIRE
PROTECTION LTD. & ORS.

.....Respondents

Through: Mr. Sanket Soni & Ms. Vaani Agarwal,
Advs. for R-1&2.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The appellants (plaintiffs in the suit) have filed the present appeal impugning an order dated 19.09.2023 (hereafter *the impugned order*) whereby the plaint filed by the appellants was returned under Order I Rule 3A of the Code of Civil Procedure, 1908 (hereafter *the CPC*) for filing separate suits against the defendants.

2. The appellants had filed the suit [being CS(COMM) No.599/2023 captioned *Renu Bajaj & Anr. v. Consilium Automation & Fire Protection Ltd. & Ors.*], against the respondents (defendants in the suit), *inter alia*, claiming that respondents are a group of companies / affiliate companies of the Consilium Group of Companies.

3. The appellants claims that they are engaged in supplying various kind of pipes, pipe fittings, hardware and other allied items. It is the appellants'



case that they had, during the usual course of business, supplied material to the Consilium Group, which includes the respondents, and at the request of the respondents had raised bills in the name of different group companies / affiliate companies for the purpose of accounting. It is also averred that all the respondents were represented by a common representative. Paragraphs 3 and 4 of the plaint are relevant and are set out below:

- “3. That the Defendant’s are the Group Companies / Affiliate Companies of Consilium Group (hereinafter referred to as Defendant Company), and the material supplied by Plaintiff Firm was to Consilium Group, who for the purpose of their accounting requested for raising the bills under the name of different Group Companies/Affiliate Companies. That the Defendant no. 1 to 5 are all Group Companies/Affiliate Companies of Consilium Group and all the group companies were represented by common representatives.
4. That pursuant to purchase orders being issued from various NTPC Sites at Sholapur, Kudgi, Darlipalli and Meja, the representative of Defendant Group Company approached the Plaintiff firm/Bajaj Industries and its proprietor(s) at their office address being 3344/8, Peepal Mahadev, Hauz Qazi, Delhi-110006, for the purchase of various kinds of Raw Materials and Products like Pipes, Pipe Fittings, Hex Nipple, Ferule, Adopter etc. and after being satisfied with the products sold by plaintiff and examining the samples and also deliberating on the cost of the said materials, the defendant group company started making demands for materials being sold by plaintiff firm. That the Defendant Group Company approached Plaintiff Firm through common representative and as per their directions, Invoices were raised in the name of different group companies/affiliate companies of Defendant Group.”

4. The learned Commercial Court found that the appellants had not raised any invoice on respondent no. 4 and had raised separate invoices on the other respondents. The learned Commercial Court, thus, proceeded on the basis that the cause of action against each of the respondents was separate and therefore,



returned the plaint.

5. The learned counsel appearing for the respondents submits that the plaint is founded on an erroneous assumption that the respondents are a group of companies / affiliate companies of Consilium Group. He submits that each company is a separate company and are not part of the same group.

6. It is not necessary for this Court to examine the merits of the averments made by the appellants. Plainly, if the appellants are unable to establish their case against the respondents as a group, their action may fail. However, at this stage, it must be accepted that the averments made by the appellants are correct to determine as to whether the plaint is liable to be returned.

7. As noted above, it is the appellants' case that the respondents are a group of companies / affiliate companies of Consilium Group and they had merely raised invoices in the name of different companies at the insistence of their common representative. In view of the above, the plaint could not have been returned by the learned Commercial Court for the appellants to seek the reliefs against the respondents separately.

8. The learned Commercial Court had also observed that the appellants are unable to show as to how the respondents were part of the same group. This issue also relates to the merits of the appellants' case.

9. There is also some ambiguity in the plaint as the appellants had, at some places referred to the invoices raised as against the 'defendant' and at some places as against the 'defendant company'. However, these averments are required to be considered by determining whether the appellants would be entitled to any final relief.

10. It is relevant to refer to Order I Rule 3A of the CPC. The same is reproduced below:



“3A. Power to order separate trials where joinder of defendants may embarrass or delay trial.—Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.”

11. There is no cavil that in terms of Order I Rule 3A of the CPC, a Court can order separate trials where it appears that any joinder of defendants may embarrass or delay the trial of the suit. In the present case, there is no ground to accept that joinder of respondents would embarrass or delay the trial of the suit. On the contrary, since it is the appellants' case that they had dealt with the respondents jointly and the invoices were raised on separate companies only for the purposes of accounting, it would be apposite that a single trial is conducted. It is also the appellants' case that respondents were represented by a common representative. This also indicates that the evidence that may be led by the appellants may be common. In these circumstances, separate trials against each of the respondents may result in the same evidence being led multiple times. This would inordinately delay the proceedings. For this reason as well, it is not apposite to conduct separate trials against each of the respondents.

12. In view of the above, the appeal is allowed and the impugned order is set aside. Pending applications are also disposed of.

13. The appellants' suit is restored before the learned Commercial Court at the stage as obtaining on 19.09.2023. All rights and contentions of the parties are reserved.



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14. The parties are directed to appear before the learned District Judge on 11.09.2024 for further proceedings.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 28, 2024

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Click here to check corrigendum, if any