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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 27th September, 2024***
+ CM(M) 860/2018 & CM APPL. 30133/2018 & CM APPL.
54888/2024

M/S SPELL ORGANICS LTDPetitioner
Through: Mr. Vidit Gupta with Mr.
Chetan, Advocates.

versus

M/S APSOM TURNER PVT LTD & ANRRespondent
Through: Mr. Shreyans Singhvi with Ms.
Akanksha Agrawal and Ms. Tanuja
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court and has filed a suit for recovery of sum of Rs. 1,20,00,000/-
2. The suit was against defendant No. 1 company-M/s Apsom Turner Pvt Ltd and four others.
3. During proceedings of the above said suit, an application was moved by defendant No. 2 under Order I Rule 10 CPC and the learned Trial Court vide order dated 18.07.2018 allowed the above said application and deleted the name of defendant No. 2 from the array of the parties.
4. Such order is under challenge.
5. The petition was filed way back in the year 2018, and it is noticed that the operation of the impugned order was put on hold.



6. It is now apprised that the case has already reached at the stage of final arguments.
7. Though, ideally speaking, since the above said impugned order had been kept in abeyance, the said deleted defendant i.e. defendant No. 2 should have, if he so desired, entered into witness box as for all practical purposes, in view of the above said stay order, he remained one of the parties. Fact remains that he did not enter into witness box.
8. Learned counsel for respondent states that the learned Trial Court has already framed issues even with respect to the joinder of the necessary parties and the petitioner has already led its evidence. He states that he would have no objection if the learned Trial Court decides the above said aspect all over again at the stage of final arguments. He, however, prays that defendant No. 2 be given one opportunity to lead evidence in order to ensure that there is no prejudice caused to him. He thus states that the petition may be allowed to the above extent.
9. Learned counsel for the petitioner has also no objection in this regard.
10. The next date before the learned Trial Court is stated to be 03.10.2024.
11. After hearing arguments from both the sides and with the consent of the parties, the present petition is disposed of with following directions:-
 - i. Since the learned Trial Court has already framed an issue to the effect *whether the suit is bad for mis-joinder of the parties*, and since the evidence has already been adduced by the petitioner/plaintiff in this regard, learned Trial Court would



decide the above said issue after hearing the final arguments from both the sides, without getting influenced by the above said impugned order dated 18.07.2018

- ii. Defendant No. 2 i.e. Mr. Shree Kumar Mundhra is permitted to enter into witness box as DW.
 - iii. As undertaken, defendnats shall not examine any other witness in his defence.
 - iv. In case, defendant No. 2 is desirous of leading evidence, the affidavit of examination-in-chief shall be submitted before the learned Trial Court on the said date and a copy, thereof, be supplied to the learned counsel for the plaintiff/petitioner.
 - v. The learned Trial Court shall fix up a date for the purposes of examination/cross-examination of said witness and both the sides would render due assistance in this regard and would ensure that the examination/cross-examination of said witness is done without any further delay.
12. Needless to say, in view of the above, the impugned order does not survive anymore.
13. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

SEPTEMBER 27, 2024/sw