



2025:DHC:6284



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 28th July, 2025*

+ CM(M) 1364/2025 & CM APPL. 44859/2025

ROSHAN LAL

.....Petitioner

Through: Mr. S.K. Bhaduri and Ms.
Shreyangana Bag, Advocates

versus

SHANTI KIRAN (INDIA) PVT LTD. AND ORSRespondents

Through: None

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 against defendant company M/s Shanti Kiran (India) Pvt. Ltd. and its two Directors (defendant nos. 2 & 3) and two guarantors (defendant nos. 4 & 5) with respect to the investment in question.
2. According to plaintiff, defendant nos. 4 & 5 had given good credential of defendant no.1 company and its Directors. Not only that, they also stood guarantors in respect of the proposed investment of Rs. 10 lacs. Similarly, even defendant No.3 had given assurance in this regard.
3. As per averments in the plaint, on the basis of specific assurance and guarantee, *albeit*, verbal in nature, plaintiff had made investment of Rs. 10 lacs and that all the defendants were, thus, jointly and severally, liable to pay the suit amount.
4. In view of their liability, defendant no. 1 company had, even, issued a cheque which was signed by defendant no. 2 and such cheque returned



unpaid, for which a compliant under Section 138 of Negotiable Instruments Act, 1881 has been filed.

5. The grievance in the present petition is very limited and it is contended that when the aforesaid suit was taken up by the learned Trial Court, for the first time, on 18.01.2025, it refused to issue any process to defendant nos. 3, 4 & 5 observing that the civil law did not envisage any vicarious liability upon Directors/officials of a company and, therefore, they could not have been made party to the suit in question and, resultantly, in terms of Order I Rule 10 CPC, their names have been deleted from the array of parties and plaintiff has also been directed to file amended memo of parties.

6. Learned counsel for petitioner/plaintiff submits that there were specific assertions and averments made against defendant nos. 3, 4 & 5 and such assertions have not been properly appreciated by the learned Trial Court and without giving any opportunity to him, their names have been deleted from the array of the parties. It is reiterated that once there was specific assertion in the plaint that such respondents/defendants had also stood as guarantor to the investment in question, there was no question of they being sued on account of any vicarious liability.

7. It is argued that liability as a guarantor cannot be equated with a vicarious liability.

8. None appears for respondents despite advance notice.

9. Since the aforesaid order has been passed suo moto by the Court when the suit was entertained for the first time and without there being any request coming from the opposite side seeking deletion of their names from the array of parties and since there are clear-cut averments made in the plaint which, it seems, were not brought to the knowledge of learned Trial Court at the time of



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consideration of suit, the present petition is disposed of with direction to learned Trial Court to re-consider the aforesaid aspect of deletion of their names in light of the specific averments appearing in the plaint and to consider the matter afresh and to pass appropriate order with respect to the role and involvement of defendant nos. 3 to 5.

10. Needless to say, in case the outcome is still the same, petitioner would be at liberty to file the petition afresh.

11. Pending application also stands disposed of in aforesaid terms.

12. All rights and contentions of parties are reserved.

13. A copy of this order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 28, 2025/dr/js