

HIGH COURT OF DELHI
Bench: Justice Shalinder Kaur
Date of Decision: February 08, 2024

CM(M) 1307/2023 and CM Nos. 41771-72/2023, 45987/2023

JASPAL CHOPRA Petitioner

VERSUS

M/S SIDHANT POLYPLAST LTD AND ORS Respondents

Legislation:

Article 227 of the Constitution of India
Order XXXVII, Order I Rule 10(2), Section 151 of the Code of Civil Procedure,
1908 (CPC)

Subject: Petition under Article 227 of the Constitution of India and Section 151 of CPC challenging the order of the Learned Trial Court in a summary suit under Order XXXVII CPC for recovery of dues based on dishonoured cheques issued by the respondent company.

Headnotes:

Suit for Recovery of Dues – Petitioner Jaspal Chopra filed a suit under Order XXXVII CPC against M/S Sidhant Polyplast Ltd and its directors for recovery of dues based on dishonoured cheques issued by the respondent company. Respondents 2 and 6 sought deletion from the suit claiming resignation from the directorship. [Paras 1-8]

Application under Order I Rule 10(2) CPC – Respondents 2 and 6 filed an application under Order I Rule 10(2) CPC for deletion from the array of parties. The Trial Court allowed this application, leading to the present petition by the petitioner. [Paras 7-8]

Petitioner's Submissions – Petitioner argued that respondents, as directors, were personally liable for the company's debts and that the Trial Court should not have allowed their deletion without considering their leave to defend application. Relied on various judgments to support the argument of lifting the corporate veil. [Paras 9-12]

Respondents' Submissions – Respondents contended there's no bar in moving an application under Order I Rule 10(2) CPC before the disposal of the application for leave to defend. They emphasized the limited scope of interference under Article 227. [Paras 13-14]

Court's Analysis and Conclusion – The High Court found no illegality in the Trial Court's decision. It noted the distinction between the liability of a director and the company and the absence of evidence showing personal liability of Respondents 2 and 6. The petition was dismissed. [Paras 15-28]

Referred Cases:

- M/s Kingfisher Airlines Ltd. vs. M/s Bangalore International Airport and Anr. (2013 SCC OnLine Kar 655)
- M/s Red Zebra Gift Promotion Pvt. vs. Pournavi Events Pvt. Ltd. (2012 SCC OnLine Del 4136)
- Sneha Ahuja vs Satish Chander Ahuja & Anr. [2021/DHC/3609]
- Sam Higginbottom of Agriculture Technology and Sciences vs. Acurite Contractors and Engineers [2016 (118) 4LR 398]
- Nawn Estates Pvt. Ltd. vs. Maheswary Ispat Ltd. [2014(2) CCC 3]
- Universal Cable Ltd. vs. The State of West Bengal & Ors. [1997 SCC Online Cal 213]
- Jammu & Kashmir Bank Ltd. vs. Digvijay Cement [2008 (105) DRJ 395 (DB)]
- Balmukand vs. Anuj Kumar (2015 SCC OnLine Del 6693)
- Anil Kumar Shaw vs. Farida Keaton (AIR 2005 SC 2209)

Representing Advocates:**Petitioner: Mr. Shaurya Dogra****Respondents: Mr. Nitin Jain for Respondents 2 & 6****J U D G M E N T**

1. The present Civil Miscellaneous (Main) petition no. 1307/2023 has been filed by the petitioner under Article 227 of the Constitution of India read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as „CPC“) against the impugned order dated 01.03.2023 passed by the Learned Additional District Judge-08, (Central District), Tis Hazari Courts, Delhi (hereinafter referred to as „learned Trial Court“) in C.S. DJ 3391/2017, titled as *“Jaspal Chopra vs. M/S Sidhant Polyplast Limited & Ors”* whereby the Learned Trial Court allowed the application under Order I Rule 10(2) CPC filed by the Respondent No.2 and 6 for deleting their names from the array of parties in a suit under Order XXXVII CPC instituted by the petitioner herein.

2. For the purpose of adjudication, the relevant facts in the present case are that the petitioner is engaged in the business of trading plastic polymers under the name of M/s Shine Polymers having its registered office at 1, Auckland Place, Kolkata. The petitioner is also a Consignment Stockiest Agent as well as a Del Credere Agent of M/s Haldia Petrochemicals Ltd. (hereinafter referred to as „HPL“). On the other hand, respondent no. 1 herein is a Limited Company incorporated under the Companies Act, 1956. The respondent nos. 2 to 6 herein are the directors / partners in four different companies i.e. M/s. Sidhant Poly Plast Ltd (Haryana), Navkar Poly Plast Co.

(Himachal Pradesh), Mukesh Overseas (Delhi) and Rehan Non-Woven Industry (Himachal Pradesh).

3. For the purpose of availing the benefits of a group company, respondent no.1 to 6 vide a letter dated 30.04.2008 requested the petitioner for being considered as a Group Company. In the said letter, they mutually agreed to pay the outstanding amount due by any of the members of the Group. The respondents as a Group company approached the petitioner to purchase plastic polymers on credit basis. Thereafter, all of them actively participated in joint meetings with the petitioner where the credit policies, discount policies and other policies relating to quantity and quality of plastic polymers were discussed. Besides this, the respondents signed various documents for becoming the registered customers of HPL and represented to the petitioner that they are the persons in-charge for looking after the affairs of respondent no. 1.

4. At the time of purchase, the respondents agreed to abide by all the rules, regulations, office memorandums and circulars issued by HPL as the terms of sale of goods on credit. In terms of such agreement, in case of any delay in the payment, the respondents were liable to pay 18% interest per annum for the first 30 days and 24% interest per annum for the subsequent period. From 30.05.2009 to 30.08.2009, the petitioner sold plastic polymers in different batches on credit to the respondents. The respondents duly received and accepted the goods worth Rs. 59,10,062/- but failed to pay the due amount to the petitioner.

5. The petitioner repeatedly requested the respondents for the payment of the due amount which was Rs. 97,65,373/- as on 22.04.2012. Further, on 23.04.2012, the respondents issued three cheques bearing no.375615, 375616 and 375617 drawn on Punjab National Bank, Civil Lines, Delhi in favour of the petitioner with assurance that the said cheques would be encashed upon presentation. One cheque was for a sum of Rs. 27,65,373/- and two cheques were for a sum of Rs. 35,00,000/- each.

6. On the same day, the petitioner presented the said cheques for encashment with his bank. All the cheques were returned as unpaid with remarks "Kindly Contact Drawer/Drawee Bank and Please Present Again" vide return memo dated 25.04.2012. Thereafter, the petitioner sent a legal notice dated 03.05.2012 to the respondents by speed post asking them to remit the said amount within 30 days of receipt of the notice. The respondents failed to make the payment of the dishonoured cheques even after receipt of the said notice. On 21.04.2015, the petitioner filed a suit under Order XXXVII

CPC before this Court on 25.09.2017, which was registered as CS(OS) No. 515/2017.

7. In compliance to order dated 26.09.2017, the abovementioned suit was disposed of due to lack of pecuniary jurisdiction, however, the petitioner was granted liberty to file a fresh suit before the District Courts within four weeks. Accordingly, the petitioner filed the present suit under Order XXXVII CPC before the learned Trial Court which was registered as CS DJ 3391/2017. After receipt of the summons in the present suit, the Respondents No. 2 & 6 moved an application under Order I Rule 10(2) CPC dated 04.02.2019 along with DIR-12 form indicating their resignation from the directorship of M/s. Sidhant Polyplast Ltd (respondent no. 1) with effect from 30.09.2014.

8. Subsequent thereto, the respondents filed their respective applications under Order XXXVII Rule 3(5) CPC seeking leave to defend before the learned Trial Court. However, the petitioner filed an application under Order XXXVII Rule 3(6)(a) read with Section 151 CPC for passing a judgment against respondent no. 1, as respondent no. 1 neither appeared in the Court nor filed an application for leave to defend. However, the learned Trial Court after hearing the arguments addressed on the application under Order I Rule 10 CPC filed by respondent no. 2 and 6 allowed the same. The petitioner being aggrieved by the impugned order dated 01.03.2023 has filed the present petition.

Submissions by the petitioner

9. Mr. Shaurya Dogra, learned counsel for the petitioner submitted that in the request letter dated 30.04.2008, the respondents had given undertaking to be personally liable to pay the petitioner the amount due from any of its members of the group company including respondent no. 1. Nonetheless, the learned Trial Court took a liberal view while deciding the application under Order I Rule 10(2) CPC moved by respondent no. 2 and 6 and got carried away with the submissions made on their behalf.

10. Learned counsel submitted that present application could not have been allowed by the learned Trial Court specifically when the application moved by the said respondent under Order XXXVII Rule 3(5) CPC was pending adjudication and the respondents had undertaken before the learned Trial Court to press the same after disposal of the application under Order XXXVII Rule 3(5) CPC moved by them.

11. It was submitted that the said application could only be allowed after considering the fact whether the respondents were cladded with a valid

defence or not. To support contentions, learned counsel placed reliance on the case of ***M/s Kingfisher Airlines Ltd. vs. M/s Bangalore International Airport and Anr.*** (2013 SCC OnLine Kar 655).

12. Petitioner further submitted that the learned Trial Court failed to appreciate that Order XXXVII CPC is a special provision wherein the defendant must obtain leave of the Court to contest the case. Whereas, in the present case, the respondents filed their leave to defend application beyond the statutory period of 10 days from service of summons and that too without any application seeking condonation of delay. Moreso, the learned Trial Court passed the impugned order without considering various documents filed by the petitioner and also ignored the settled law that where a Court comes to a conclusion that a company's business was not being conducted in accordance with the provisions of the corporate legislation, it can pull up the „corporate veil“ and discover the true culprit.

To substantiate arguments further, learned counsel placed reliance on the following judgments:-

- a. ***M/s Red Zebra Gift Promotion Pvt. vs. Pournavi Events Pvt. Ltd.*** (2012 SCC OnLine Del 4136).
- b. ***Sneha Ahuja vs Satish Chander Ahuja & Anr.*** [2021/DHC/3609].
- c. ***Sam Higginbottom of Agriculture Technology and Sciences vs. Acurite Contractors and Engineers*** [2016 (118) 4LR 398].
- d. ***Nawn Estates Pvt. Ltd. vs. Maheswary Ispat Ltd.*** [2014(2) CCC 3].
- e. ***Universal Cable Ltd. vs. The State of West Bengal & Ors.*** [1997 SCC Online Cal 213].

Submissions by the respondents

13. Respondents on the other hand refuted the submissions of the petitioner. Mr. Nitin Jain, learned counsel submitted that there is no bar for moving an application under Order I Rule 10(2) CPC seeking deletion of respondents from array of parties before the disposal of the application for leave to defend. All the provisions of the CPC are equally applicable to the suits under Order XXXVII CPC as it is applicable to an ordinary suit. Reliance placed on the case of ***Jammu & Kashmir Bank Ltd. vs. Digvijay Cement*** [2008 (105) DRJ 395 (DB)].

14. Learned counsel further submitted that the power of this Court under Article 227 of the Constitution of India is limited, while exercising power of superintendence, it would interfere only, if there is an illegality or error of jurisdiction in the decision of the learned Trial Court. However, the petitioner

has failed to point out any such jurisdictional error in the order dated 01.03.2023. Reliance placed on ***Balmukand vs. Anuj Kumar*** (2015 SCC OnLine Del 6693).

Reasons and conclusions

15. I have heard learned counsel for the parties, perused the impugned order and considered the documents on record.

16. Order I Rule 10(2) CPC empowers a court to add or strike out a party to the suit at any stage of the proceedings. The said sub-rule is about the judicial discretion of the Court which can be exercised either suo-moto or on the application of the plaintiff or defendant. Such deletion or addition can be done without any condition or subject to such terms as the Court deems fit to impose. However, the judicial discretion is to be exercised on sound principles of reason and fair play.

17. Order XXXVII CPC aims to achieve expeditious disposal of disputes in commercial nature. The essence of Order XXXVII is that the defendant is not, as in an ordinary suit, entitled as of the right to defend the suit. He must apply for leave to defend within 10 days from the date of service of summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as the court may deem fit for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence to the suit of the plaintiff.

18. The short question, which arises for consideration in this petition is, whether the application under Order I Rule 10(2) CPC of the respondents no. 2 & 6 could have been decided, before the leave to defend is granted in their favour.

19. The contention of the petitioner is that before leave to defend is granted, the defendant in the suit under Order XXXVII CPC has no basis to contest the suit of the plaintiff in any manner. Moreso, in the present case, the respondents no. 2 & 6 are necessary and proper parties being the directors of the Group company. They gave an undertaking and became personally liable to pay to the petitioner, his outstanding towards the company, thus, the application for their deletion from the array of parties in the suit could not have been permitted by the learned Trial Court.

20. Undoubtedly, the expression “at any stage of the proceedings” appearing in Order I Rule 10 CPC reflects the intention of the legislature which confers a wide discretion on the court in the matter of adding or striking out

any party, even at a later stage or at the appellate stage also as discussed in case of **Anil Kumar Shaw vs. Farida Keaton** (AIR 2005 SC 2209). Therefore, the provision does not specify any particular stage in the proceedings, when the application moved under Order I Rule 10(2) CPC shall not be entertained by the Court. The language of Order I Rule 10(2) CPC is plain and simple and it would be against the will of the legislature to give any other meaning to “any stage of the proceedings” occurring in the provision and shall amount to deviating from the general Rule of interpreting the Statute that Court must generally adhere to the ordinary meaning of the words used.

21. The above-mentioned expression is by itself very clear and means „any stage of proceedings” till the passing of the final decree in the suit. In so far as the provision under Order XXXVII CPC is concerned, there also cannot be a digression while interpreting “any stage in the proceedings” occurring in Order I Rule 10(2) CPC.

22. In the present case, the view taken by the Learned Trial Court while allowing the application moved by the respondents no. 2 & 6 under Order I Rule 10 (2) CPC for deleting their names from the array of parties is within the scope of the provision and is in consonance with the judicial precedents and jurisprudence available on Order I Rule 10 (2) CPC.

23. It is further the contention of the petitioner that respondent nos. 2 & 6 infact are the necessary parties, who not only are the directors of respondent no. 1 but are also personally liable to clear the debts of the petitioner. To stress upon his submission, the learned counsel has heavily relied upon the undertaking of Group of Company as occurring in letter dated 30.04.2008, therefore, the same is being reproduced herein under:-

“We enclose herewith the following documents in support of the relationship.

- 1. Request letter from the Group constituents.*
- 2. CA Certificate dated in the prescribed format.*

We assure you that any change with respect to the information furnished above shall be intimated to you forthwith. Failure to do so will make us liable to reimburse HPL the loss suffered, if any.

We understand that as a member of the Group, we are also liable for the amount due to you by the other concerns of the Group. Therefore, we shall have no objection to your appropriating the sums payable to us towards the amount due from them.

We request you to consider our case as per your Group Company Norms effective for the period, and pass on the entitled benefits accordingly.

*Thanking you,
Yours faithfully
For Sidhant Poly Plast Ltd.*

(Authorised Signatory)”

24. It is an admitted position of law that the identity of the director or shareholder of a company is distinct from that of the company, which is the very foundation of a company or corporate identity or juristic person. However, the principle also takes care to cover the case of fraud, improper conduct etc. of the directors, when such a director or shareholder can be personally made liable. Therefore, proposition of limited liability of the directors / shareholders *vis-a-vis* their company cannot be obliterated.

25. It is trite that an individual director has no power to act on behalf of a company of which he is a director, unless there is a specific resolution of the Board of Directors of the company giving specific power to the director or where the articles of the company confer such power. Thus, other than where the directors have made themselves personally liable i.e. by way of guarantee, indemnity etc., liabilities of a director of a company under common law are confined to cases but they do not owe fiduciary or contractual duties or any other duty to a third party, who deal with the company.

26. The summary suit filed by the petitioner is based on three cheques, which have been issued by respondent no. 1 company, however, same are not signed either by respondent nos. 2 & 6. Both respondents had taken the plea that they had resigned from the directorship of the respondent company with effect from 30.09.2014 and thereafter, had no concern with the affairs of the company. Moreover, letter dated 30.04.2008 relied upon by the petitioner has been signed on behalf of the company by its authorized signatory and that too is not signed by either respondent nos. 2 or 6. It is not disputed that the petitioner has not placed on record any personal guarantee or security or indemnity furnished by respondent no. 2 & 6, also, there are no averments of commission of fraud or misconduct on their part to hold them personally liable.

27. The judgments relied upon by the learned counsel for the petitioner being in the factual context of respective cases are not applicable to the present petition.

28. Having regard to the above, the findings of learned Trial Court do not suffer from any illegality, consequently, the present petition, along with pending applications, is dismissed.

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