

(2012) 08 DEL CK 0170
In the Delhi High Court
Case No : CM (M) 913 of 2012

Rajesh

APPELLANT

Vs

Himalayan Times Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2012) 08 DEL CK 0170

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Pranay Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Mehta, J.

CM No. 14030/2012 (Exemption) in CM(M) 913/2012

Allowed, subject to all just exceptions.

The application is disposed of

CM(M) 913/2012 & CM No. 14031/2012 (stay)

1. This petition under Article 227 of the Constitution of India is directed against the order dated 4.6.2012 of Learned ADJ whereby application U/O 1 Rule 10 CPC filed by the respondent No.1, the plaintiff in the suit, was allowed and petitioner was permitted to be impleaded as defendant No.2 in the suit. The petitioner has assailed the said order alleging the same to be in violation of the principles of natural justice and also illegal.

2. I have heard Learned Counsel for the petitioner and perused the record and the impugned order.

3. The suit was filed for recovery of money against defendant Lokesh Chaudhary,

proprietor of M/s Vaishali Infotech. In the written statement filed by Lokesh Chaudhary, his stand was that he has nothing to do with M/s Vaishali Infotech and had never been in business of computer parts under the name and style of this firm at the address as given by the plaintiff. Subsequently, the plaintiff discovered that defendant Lokesh was doing business in the aforesaid firm as its proprietor in the name of his brother Rajesh. This fact was discovered from the Sales Tax (VAT) record that it was Rajesh Chaudhary who was the proprietor of the aforesaid firm doing business from some other address. On this premise, he moved the application under Order 1 Rule 10 CPC for impleading Rajesh Chaudhary as defendant No.2, which came to be allowed by the impugned order, which is under challenge in this petition.

4. The main grievance of the petitioner who was impleaded as defendant No.2 is that the suit was filed by the plaintiff against the proprietor of the firm, namely, Lokesh Chaudhary and it would be deemed to be against the proprietor Lokesh Chaudhary only. It was also his grievance that he was not heard and principle of natural justice was violated by the learned ADJ. All the pleas which have been taken by the petitioner are misconceived and are not tenable. The suit was filed against the firm M/s Vaishali Infotech through its proprietor Lokesh Chaudhary. The address of firm, as per the record with the plaintiff was G-11, Suryadeep Building, Commercial Complex, Wazirpur, Delhi-52. It was at this address that the dealings of the business was done by the plaintiff with the firm. Since it was Lokesh Chaudhary who was representing himself to be the proprietor of the said firm and dealing with the plaintiff, he was mentioned as proprietor of the said firm in the plaint. However, on coming to know that the actual proprietor was his brother Rajesh Chaudhary and not he, that the plaintiff sought to implead Rajesh Chaudhary also as a defendant. The fact that summons issued in the name of Lokesh Chaudhary as proprietor of M/s Vaishali Infotech was served at the address of Suryadeep Building, Commercial Complex, Wazirpur, Delhi-52, confirms Lokesh Chaudhary to be having some relation or concern with the said firm. If he had no concern or relation with the said firm, he ought not to have accepted the summons and rather informed as to who was the proprietor of the said firm. It was on receipt of the summons at this address that Lokesh Chaudhary filed written statement alleging to be having no concern with the said firm. He nowhere disclosed either at the time of receipt of summons or in the written statement that it was not he, but his brother Rajesh who was the proprietor of the said firm. The entire conduct of both the brothers seem to deceive the plaintiff at the end of termination of the trial and escape the liability. The presence of Rajesh Chaudhary is essential and necessary for the just decision of the case inasmuch as undisputedly he was the proprietor of M/s Vaishali Infotech from whom the recovery was sought by the plaintiff. I do not see any infirmity or illegality in the impugned order. The petition has no merit and is hereby dismissed.