

(2010) 11 DEL CK 0348
In the Delhi High Court
Case No : FAO (OS) 607 of 2010

Sandeep Thapar

APPELLANT

Vs

SME Technologies Pvt. Ltd. Earlier Known as Kalpataru
Energy Venture Pvt. Ltd.

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 10 Rule 1, Order 8 Rule 2, 151

Citation : (2011) 1 ILR Delhi 700

Hon'ble Judges : Vikramajit Sen, J; Mukta Gupta, J

Bench : Division Bench

Advocate : S.S. Ray, for the Appellant;

Final Decision : Allowed

Judgement

Mukta Gupta, J.

CM No. 18613/2010 (Delay)

For the reasons stated in the Application, the same is allowed. Application stands disposed of accordingly.

FAO (OS) 607/2010 & CM No. 18612/2010 (Stay)

1. The Appellant/Defendant in the Suit sought impleadment of Shri Sharad Maheshwari, Managing Director of the Respondent Company as a Plaintiff and a direction to file an Affidavit supporting the averments in the plaint besides being examined by the Court in IA No. 11803/2008 under Order I Rule 10 and Order X Rule 2 read with Section 151 CPC. The Appellant contends that since Mr. Sharad Maheshwari was dealing with the Appellant for and on behalf of the Respondent/Plaintiff Company being its Managing Director, he was a necessary party to the Suit. Learned Counsel contends that the entire Suit is based on the oral agreement between the Appellant and Mr. Maheshwari and thus he is a necessary party to the adjudication of the Suit.

2. The learned Single Judge dismissed this Application of the Appellant for the reason, the Respondent being a company is persona in law and is entitled to sue in its own name through an authorized representative. In so far as the examination of Shri Sharad Maheshwari under Order X Rule 2 CPC is concerned, it was observed if need be the same will be recorded at the relevant stage.

3. We do not find any infirmity in the Impugned Order. The learned Single Judge has rightly held that it is not necessary to implead Shri Sharad Maheshwari as a Plaintiff, as the company being a legal entity is entitled to file a Suit in its own name through an authorized representative. Moreover, it is for the Respondent/Plaintiff to prove its case during the trial and if it does not implead or does not examine Shri Sharad Maheshwari the consequence thereof will flow.

4. The Appellant filed yet another Application being IA No. 13902/2008 under Order VIII Rule 1 read with Section 151 CPC for extension of time to file the Written Statement till the disposal of Application IA No. 11803/2008. As per the Appellant since Mr. Sharad Maheshwari had not filed his Affidavit despite the entire Suit being based on an oral agreement alleged to have been entered into between the Appellant and Shri Sharad Maheshwari, in case the Appellant was to file his Written Statement that would disclose his defence and the Respondent is thus likely to change/modify the case set up in the Suit.

5. In our view, the learned Single Judge rightly dismissed this Application on the ground that even if Shri Sharad Maheshwari was impleaded as a party and would have filed his Affidavit, the averments in the plaint could not have been changed. The same would not have changed the character of the plaint, pleadings contained therein and the relief sought by the Plaintiff. Thus, in no manner can the pendency of the abovementioned Application be considered as a good or sufficient cause for not filing the Written Statement within the period prescribed.

6. This Application of the Appellant was not accompanied by the Written Statement. Order VIII Rule 1 CPC is a clear mandate to the Court to permit filing of the Written Statement within 30 days from the date of service of summons and the Court has power to permit a period of further 60 days from the date of service of summons to the Defendant to file Written Statement for reasons to be recorded in writing. This being the position the learned Single Judge rightly dismissed the Application as neither the ground for extension of time to file the Written Statement was made out nor an Application for condonation of delay nor the Written Statement was filed. The learned Single Judge rightly struck off the defence of the Appellant and we are not inclined to interfere with this order.

7. The Appeal and all Applications are accordingly dismissed.