

CS (COMM) No.: 616/24

M/s DE Neers Tools Ltd. Vs. M/s Friends Machine Tools

22-08-2024

ORDER :

1. This order shall decide following two applications :-
 - i. Application of defendant no.2 for rejection of plaint under Order VII Rule 11 CPC ;
 - ii. Application of plaintiff under Order I Rule 10 CPC for deleting name of defendant no.2 and for impleading him as LR of defendant no.1.
2. Counsel for the plaintiff argued on his application under Order I Rule 10 CPC that firm namely M/s Friends Machine Tools was being run by one Mr. Dost Mohd. as proprietor and he did business with the plaintiff. But he stopped doing business some years ago and at that time, outstanding amount was ₹ 58,84,985/- which he did not pay. So plaintiff filed pre-institution application before mediation cell pursuant to which Sh. Anwar Siddique / defendant no.2 appeared and told that his father had expired during covid-19 and thereafter, he was running the same firm and in that capacity, he had made payment of ₹ 2 lakhs. Counsel further submitted that he impleaded son of Sh. Dost Mohd. as defendant no.2 as he made payment in mediation cell saying that he was running the business of his father as proprietor. But in written statement, he took the stand that his name was not Anwar Siddiqui and

rather, he was Mohd. Anwar and his father had expired on 30-04-2021. Last invoice relied upon by the plaintiff was dated 16-01-2021 and so Mohd. Anwar was not liable for anything as he did not continue the firm after the death of his father and rather, he started a new firm though by the same name and obtained a new GST registration number. He further submitted that in view of that, defendant no.2 is no more a necessary party and that he be impleaded as one of the LR of Sh. Dost Mohd. who was proprietor of the defendant.

3. Counsel for the defendant no.2 replied and also argued on his application under Order VII Rule 11 CPC that his client's name is not Mohd. Siddiqui but Mohd. Anwar and he has been unnecessarily impleaded because whatever amount has been claimed by the plaintiff pertains to the business done by him with his father who expired on 30-04-2021. Thereafter, Mohd. Anwar formed new proprietorship concern in the same name i.e. Friends Machine Tools and obtained fresh GST registration number. Due to that reason, no cause of action was there for plaintiff to file suit against defendant no.2.
4. Both parties are agreeing that the plaintiff is claiming outstanding dues for goods sold by him to the father of defendant no.2 who expired on 30-04-2021. The date of last invoice is 16-01-2021. Defendant no.2 started business by the name of his father's firm i.e. M/s Friends Machine Tools and obtained new GST registration number. So he is

not a necessary party and his name is deleted. After deletion of his name, his application under Order VII Rule 11 CPC is no more survives and so, it is also dismissed.

5. Second relief claimed in application under Order I Rule 10 CPC is for impleading of Mohd. Anwar as one of the LR of defendant no.1. But proper course for doing so is to move application under Order XXII Rule 4 CPC and not Order I Rule 10 CPC. Moreover, there may be other LRs of Mr. Dost Mohd and so, 2nd relief is denied.

(UMED SINGH GREWAL)
District Judge- Commercial Court-05 (Central)

22-08-2024