

CS no. 350/20

**MS I.C Technologies Pvt Ltd VS MS Innowin Professional
Services Pvt Ltd**

13.12.2022

**File received by way of transfer vide order no. 33/G-
I/Gaz-IA/DHC/2022 dated 16.11.2022 from the Court of Sh.
Rajesh Kumar, Ld. ADJ-03, (East), KKD Courts, Delhi.**

Present: Ms. Vibha Sharma, Ld counsel for plaintiff.

Sh. B L Sharma, Ld counsel for defendant no.2.

Sh. Puneet, Ld proxy counsel for defendant no.3.

Defendant no.1 is already ex-parte.

Argument on the application filed U/o 1 rule 10 CPC
on behalf of defendant no.2 for deletion, heard.

Put up for orders at 4.00 pm

**(Kishor Kumar)
ADJ-04, East District,
Karkardooma Courts, Delhi
13.12.2022**

(At 4.00 PM)

Present: None.

ORDER

The contention of Ld counsel for defendant no.2 made in
the present application for deletion is that no relief can be claimed
against defendant no.2 as there exists no relations between
defendant no.2 and other defendants. There is no claim assigned to

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defendant no.2 in the entire plaint. The plaintiff has fabricated agreement dated 05.02.2009. The plaintiff is very much aware about the resignation dated 20.06.2011 of defendant no.2 from the defendant company and that is why the plaintiff concocted and fabricated document dated 08.06.2011 in order to cover the limitation. Defendant no.2 was one of the Director of defendant no.1 company between January 2009 to August 2010 as such there is no personal liability of defendant no.2 qua the plaintiff.

Plaintiff has filed reply to the present application praying for its dismissal on the ground that at the relevant point of time defendant no.2 was looking after the day to day affairs of defendant no.1 being its Director and as such he is very much liable. The present application has been filed to delay the proceedings.

I have heard ld counsel for defendant no.2, Ld counsel for the plaintiff and have carefully gone through the record.

The plaintiff has filed present suit for recovery of Rs. 19,58,675/- against defendants. Defendant no.2 is stated to be the Director of defendant no.1 along with another Director i.e defendant no.3. Defendant no.1 through defendant no.2 and 3 approached the plaintiff company in January 2009 for supply of computer hardware and software etc. Accordingly, an agreement

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dated 05.02.2009 was entered into between the parties. The plaintiff and defendants starting doing the business. In February 2009, plaintiff company supplied the material to the defendant company worth Rs. 13,49,349/-, further in March 2009 material worth Rs. 6,03,715/- and further in the month of April 2009 material worth Rs. 60,684/- was supplied to the defendants. Again in May 2009 material worth Rs. 2,57,920/-, further in June 2009 material worth Rs. 37,128/- and in July 2009 material worth Rs. 73,359/- was supplied to the defendants. However, the defendants failed to make the payment of the goods supplied. As on August 2010, a total amount of Rs. 19,58,675/- stands due and payable by the defendants to the plaintiff company. Plaintiff served legal notice dated 31.07.2013 upon the defendants but the defendants failed to make the payment of the outstanding amount.

Defendant no.1 remained ex-parte.

Defendant no. 2 has filed his written statement and has denied the case of the plaintiff on the grounds that defendant no.2 resigned as Director of defendant no.1 vide his resignation letter dated 20.06.2011. The document being relied upon by the plaintiff dated 08.06.2011 is a manipulated document. Defendant no.2 is not liable to the plaintiff company.

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Defendant no.3 in his written statement stated that the plaintiff has filed the present suit in collusion with defendant no.2. Agreement, if any, say dated 05.02.2009, has been executed between plaintiff company and defendant no.2. There is no liability of defendant no.3 towards the plaintiff company.

So far as the application of defendant no.2 filed U/o 1 rule 10 CPC is concerned, defendant no.2 alleges that he resigned from the defendant no.1 company on 20.06.2011. The case of the plaintiff is for the period prior thereto when admittedly defendant no.2 was one of the Director of the defendant no.1 company.

In such circumstances, defendant no.2 cannot say that he does not owe any liability towards the plaintiff company. The application U/o 1 rule 10 CPC filed on behalf of defendant no.2 is found to be baseless and mischievous one. The same is accordingly dismissed.

Put up the case for plaintiff evidence on **24.03.2023**.

(Kishor Kumar)
ADJ-04, East District,
Karkardooma Courts, Delhi
13.12.2022