

05.03.2020 at 4.00 p.m.

ORDER

Present: Counsel for both the parties.

1. Arguments on application u/O 1 R 10 CPC r/w Section 151 CPC filed on behalf of proposed defendant i.e. M/s Royal Regency Fashions Pvt. Ltd. already heard.
2. The plaintiff has filed a suit for recovery against the defendant on the ground that the plaintiff had given a loan of Rs.5 Lakh to the defendant by way of cheque which the defendant did not return necessitating the plaintiff to file the present suit.
3. In the written statement filed by the defendant various grounds have been agitated regarding non-maintainability of the suit and as of now the suit is at the stage of defendant's evidence.
4. It is stated in the application in hand that in the written statement filed by the defendant, the defense has been taken that certain consignment was supplied to the plaintiff which belonged to the proposed defendant regarding which invoices were raised because of the said reason the proposed defendant wishes to be impleaded as defendant in the present suit whose presence is essential and necessary for the just disposal of the suit.

5. In reply filed on behalf of the plaintiff, the application has been opposed on the ground that the present application has been filed at the fag end of the trial. The sole motive is to delay the proceeding. The application has also been opposed on the ground that no dealing between the plaintiff and the proposed defendant had taken place.
6. When the plaintiff files his suit, the plaintiff being *dominus litis* has all the right to choose his opponent against whom the plaintiff has to fight his case and seek the relief. The party in a suit broadly falls in two categories, the first is the necessary party; in the absence of whom no effective order in favour of the plaintiff can be passed. In case the plaintiff has not impleaded the necessary defendant, the suit of the plaintiff is liable to be dismissed. The other category is of pro-forma party whose absence will not affect the passing of an order which may be executed, however whose presence may be necessary for completely and effectually disposing the case. In the case where plaintiff has not impleaded a defendant who is merely a pro-forma defendant that would not materially affect the case of the plaintiff.
7. In the present case if the proposed defendant was a necessary defendant whom the plaintiff did not implead after the trial, the suit of the plaintiff would be liable to be dismissed and if the suit is dismissed, the benefit would be reaped by the defendant as the plaintiff is opposing the present application.
8. From the averments in the plaint, the Court is of the opinion that the presence of the proposed defendant is not necessary for the

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determination of any fact in dispute so far as the case of the plaintiff is concerned. Even otherwise in view of Order 1 Rule 13 of CPC also at this stage when the matter is for defendant's evidence, the court does not find any merit in the application. Accordingly, present application is dismissed.

Put up for DE on 21.04.2020.

(Vijay Kumar Jha)
Addl. District Judge-02(East)
Karkardooma Courts-05.03.2020