

CS 315/2020

BHIM CHAND VASHISHTHA vs. M/S IBD TRADERS

22/10/2022

Present: Sh. Tarun Kumar, Ld. Counsel for plaintiff
None for defendant on call.

Put up at 4.00 p.m. for further consideration.

(Sanatan Prasad)
Addl. District Judge-02 (East)
Karkardooma Courts/22/10/2022

4.00 p.m.
Present: None on call at 4.00 p.m.

The plaintiff/Proprietor has moved the present application under order 6 Rule 17, CPC also under Order 1 Rule 10, CPC for addition of M/s Oppo Mobiles (Delhi Private Ltd.), having its registered office, at E-42/2, Okhla Industrial Area Phase-II, New Delhi- 110020, as a defendant, inter alia, on the grounds that the plaintiff, also the present defendant, i.e. M/s IBD Traders started business transactions w.e.f. 07.06.2016 on the representation given by the present defendant, as being authorised distributor of M/s Oppo Mobiles, East Delhi, Part-II Zone and copy of letter dated 06.06.2016, issued by the present defendant and received and accepted by the plaintiff is enclosed to buttress, the contention/(s), that the billing and supplies of M/s Oppo Mobile Phones to the dealers of the above area was to be done by the present defendant w.e.f. 07.06.2017 and thus, the dues mounted

to the tune of Rs.18,90,240/- during the course of the transactions between the plaintiff as well as the present defendant.

The plaintiff further claims that in the written statement filed, by the present defendant, it is claimed that the proposed defendant i.e. M/s Oppo Mobiles, alone, is responsible to make pay outs towards the commission etc., to be given to the plaintiff and further the 'Credit Notes' were duly, issued to the plaintiff accordingly, and the present defendant is not responsible in this regard. A copy of 'Distributor Agreement' dated 02.06.2016 is also enclosed, as Annexure-A, in this regard by the present defendant, and on these grounds impleadment, as above, is requested.

It appears that the plaintiff has also placed on record proposed amended plaint.

I have heard arguments by the Ld. Counsel for the plaintiff, also the defendant and carefully perused the reply filed by the proposed defendant, as above, and also gone through the materials, available on record.

In the reply, filed by the proposed defendant, claiming its impleadment not only unnecessary and improper, but even the plaintiff is said to be alien to the Distributor Agreement, i.e., Annexure-A, and in nutshell, it is claimed that this proposed defendant cannot be even made a party to the present suit for recovery on the strength of any unilateral understanding, allegedly, arrived between the plaintiff and the defendant and the plaintiff cunningly, failed to supply copy of documents and only

supplied the copy of plaint despite directions, moreover, the reliance is placed on by the plaintiff on the invoices, which are even disputed by the proposed defendant and these self,-created/serving documents cannot be put to use to fasten the proposed defendant with the liability qua the plaintiff and the entire transactions, if any, between the parties to the suit has no relation with the proposed defendant and as such the plaintiff has got no legal legs/locus standi to seek impleadment beyond its pleadings and merits of the case and it appears that the Ld. Counsel for the proposed defendant, i.e., Sh. Ajay Goel has not appeared to address his arguments in opposition, to the present application, but Ld. Proxy Counsel on his behalf has submitted that the reply, made to the application may be treated as written arguments by the proposed defendant, opposing the present application, on the other hand, Ld. Counsel for the defendant has submitted that it was in response to the application moved under Order VII Rule 11, CPC, that the plaintiff comes out with the present application, inasmuch as, the entire liability for 'Commission/Incentives' falls upon the company itself, in terms of the Agreement, dated 02.06.2016 and as per Price Policy and payment terms, and the present plaintiff is not a privy to the agreement dated 02.06.2016 and therefore, application has been moved on the basis of hearsay and conjectures, and dismissal of the application is prayed for.

In the foregoing background, the plaintiff, as Retailor seeks to recover the amount of Rs.18,90,240/- as Commission/Incentives, accrued to him besides, damages

of Rs.2,00,000/- and the defendant clearly, denies it on the ground that the same has to be disbursed by the proposed defendant, whereas, the proposed defendant absolves, itself as being a stranger, to the agreement/understanding, if any, between the parties to the suit.

Thus, in the above noted scenario, the real matter effectually and completely to be adjudicated upon emerges as to “whether the plaintiff is entitled for recovery as claimed and if so, from whom”. The initial suit has been filed against the distributor on the strength of a copy of the letter, dated 06.06.2016, written on the letter head of the defendant and the first paragraph of the letter reads as under :-

“We are pleased to inform that we have been appointed by OPPO Mobiles (Delhi) Private Ltd. Authorised Distributors of OPPO mobiles for the East Delhi Part II Zone. All the billings & supplies of OPPO mobile phones to the dealers of this area will be done by us. All the pending schemes, Price Drops, Incentives & disputes, if any, pertain to before 6.06.2016 will be settled by the IOC (Old distributors) & OPPO mobiles. Kindly give your acceptance of this by giving the following details duly signed & stamped by the owner/Authorized Signatory of your firm to start business Transaction with us.”

The letter appears to have been issued by the defendant for the billing name M/s TELE TALK COMMUNICATION and it also bears seal of the Proprietor concern of the plaintiff, but the proposed defendant is not a signatory to it. However, clause 2.7 of the agreement,

i.e., Annexure-A, dated 02.06.2016, goes to state as under:-

“All documents executed between parties pursuant to the execution of this agreement, in pursuance of terms and conditions of this agreement and all circulars and written directives issued by a competent authority of Company under this agreement shall form an integral part of this agreement”; thus, it could be seen that the representation made by the defendant, to the plaintiff has to be considered a part of 'Agreement' dated, 02.06.2016, in this scenario as it falls within the purview of the implied authority of the Principal as per custom and 'usage' of the trade.

And therefore, the letter issued by the defendant and accented by the plaintiff purports to have been authorized by the company, i.e., M/s OPPO Mobiles and it is a matter of common knowledge that the retailers purchase their stocks through the distributors, appointed by the manufacturer/company, dealing directly, in turn with the distributors only, and therefore, there is a clear representation made by the distributors, which is considered to have been made in the ordinary course of business and Section 194 of the Indian Contract Act, 1872 defines the relation between Principal and Person duly, appointed by agent to act in business of agency and it provides for where an agent, holding an express or implied authority to name other person to act for the principal in the business of agency, has named another person, accordingly, then such person is not a sub-agent.

It, therefore, could be seen that the 'Authority', emanating from the Principal vests with the agent and it descends upon the sub agent, who, in – turn, is bestowed with the authority of the Principal and his character changes and he is placed in the shoes of the 'Agent', thus, can bind the 'Principal'. Further, the authority of an agent may be expressed or implied, as per section 186 of the Indian Contract Act, 1872 and Section 187 of the Act defines an express authority to be one, when it is given by words spoken or written, whereas, implied authority can be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted under the circumstances of the case.

It is a matter of common knowledge that as per usual custom of a particular trade and in this case, business of 'dealing in mobiles', the company, concerned appoints distributors, who in – turn, appoint Dealers and Dealers may be even 'Exclusive' or they might be dealing with various brands and various promotional schemes are offered by the company and with the passage of time they change such schemes and further, float other schemes, benefits, whereof can be availed by the dealers either from the company directly or from the distributor, dealing with the retailers, as per terms and conditions, agreed upon between the parties. In the present case, the letter, dated 06.06.2016 shows that all the pending Schemes, Price drops, Incentives and disputes, if any, pertaining to before 6th June, 2016 were to be settled by the IOC (Old

distributor) and OPPO mobiles, therefore, the presence of proposed defendant is not only proper but also very necessary to adjudicate upon the present dispute, involving the issue, as to “whether the plaintiff is entitled for the recovery of Rs. 18,90,240/- and if so, from whom”, and whether it is the distributor or the company, itself. It is also, to be noted that the Court can, at any stage of the proceedings either on an application made by the parties or otherwise, direct impleadment of any person as party; who ought to have been joined or whose presence before the court is necessary for effective and complete adjudication of the issue involved in the suit and they have interest/(s), in the matter. It is, therefore, clear that the proposed defendant is a party, who ought to have been joined, to the present suit as defendant, by the plaintiff in the beginning itself, and the presence of proposed defendant is necessary for effective and complete adjudication of issues involved in the present suit, (Vidur impex & Traders P. Ltd. vs. Tosh Apartments Pvt. Ltd., AIR 2012 SC 2925). Thus, the application stands allowed and proposed defendant is added as defendant no. 2 in the suit.

Let the defendant no. 2 be supplied with the copies of the documents, relied on in the suit, immediately against receipt and thereafter, WS be filed with copy to Sh. Tarun Kumar, Ld. Counsel for the plaintiff in advance and against receipt on **21.12.2022**.

(Sanatan Prasad)
Addl. District Judge-02 (East)
Karkardooma Courts/22/10/2022