

**CS No. 10/22**

**J.K. Goyal Estate Developers v. Ficus Securities Ors.**

**23.07.2022**

Present: Sh. Abhishek Paruthi and Sh. Pradeep Kataria,  
Advocates for the plaintiff.

Sh. Dhairya Gupta and Ms. Divya Joshi, Advocates for  
defendants.

**ORDER**

1. This order shall decide four applications each moved under Order I Rule 10 read with 151 CPC moved on behalf of applicants arraigned as defendant nos. 2 to 5 in the suit for striking of their names from the array of parties.

2. Briefly stated, the plaintiff company has filed a suit for recovery of Rs.39,25,000/- along with pendente lite interest @12% per annum till the date of realization against defendant no.1 company and defendant nos. 2 to 5. Suffice to state that vide paragraph 2 of the plaint, defendant nos.2 to 5 are claimed to be its directors and stated to be in control of day-to-day affairs of defendant no. 1 company. It is claimed by the plaintiff company

Contd...2

that defendant no.1 company was advanced a loan of Rs.1,20,00,000/- on 04.01.2017 on negotiation that were conducted by defendant no.2 and the loan was not refunded within three months as stipulated by the agreement and only Rs.95 lakhs were paid by the defendants and the balance amount had not been paid despite e-mail notices dated 14.11.2017 followed by another e-mail on 16.11.2017 besides a police complaints lodged on 15.02.2018 and 25.02.2018. Lastly, a legal notice dated 11.05.2018 was issued for refund of balance amount of payment, and since, the same was not paid, the present suit for recovery is filed.

**3.** Written Statements have already been filed on behalf of defendant no.1 company separately and jointly on behalf of defendant nos. 2 to 5.

**4.** The instant applications under Order I Rule 10 CPC by each of defendant nos. 2 to 5 have been moved on 27.04.2022 and the pleadings are identical to the effect that neither of the defendant nos. 2 to 5 are necessary or proper party to the present suit. The main plank of the pleadings in the instant applications is that applicants/defendants are not individually liable or responsible for

any contractual liability for defendant no.1 company; and it is stated that defendant no.3 had resigned from the directorship on 02.11.2017 whereas defendant no.4 was never a director at any point of time, while defendant no.5 became director afterwards i.e. w.e.f. 02.11.2017. Hence, it is prayed that there is no cause of action against any of the defendant nos. 2 to 5 and a prayer is made to delete their names from the array of parties.

**5.** No reply has been filed by the plaintiff's company to the aforesaid applications. However, the applications are opposed and Ld. Counsel for the plaintiff has referred to the order dated 20.03.2018 passed by SEBI whereby the defendant no.1 company and its directors viz. Defendant nos. 2,3&5 have been found to be involved in various kinds of financial irregularities including improper use of client's securities and it was vehemently urged that the directors have been restrained from alienating any assets whether movable or immovable or any interest or investment or charge in any of such assets.

**6.** Per contra, Ld. Counsel for the applicants/defendants submitted that the transaction in question has nothing to do with this

inquiry or order passed by the SEBI and in support of their applications, they relied the decision in **Gurmeet Satwant Singh Ors. v. Meera Gupta Ors.** MANU/DE/2507/2019 besides **Mukesh Hans v. Uma Bhasin** MANU/DE/2160/2010.

7. I have given my thoughtful consideration to the rival submissions advanced by the Ld. Counsel for the parties at bar. I have perused the entire record of the case.

8. At the outset, I find merits in the plea advanced by the Ld. Counsel for the applicants/defendant nos. 2 to 5 since this is a case where contractual relationship for advancing loan was established between plaintiff and defendant no.1 company and defendant no.1 company is a juristic person, and in that eventuality, the directors of the company cannot be held to be individually liable in respect of the contract. There are shown no grounds to lift the 'corporate veil' either so as to make them individually liable. Although, the allegation is made about SEBI inquiry into some financial irregularities, allegedly committed by defendant nos. 2 to 5 in the instant case, there are leveled no allegation which would justify the lifting of corporate veil.

9. A fortiori the facts of cited case of **Gurmeet Satwant Singh (supra)**, are clearly applicable in the present case where also in a suit filed under Order XXXVII CPC, the directors had been impleaded apart from company and the earlier decision in **Mukesh Hans (supra)** was also relied upon and it was held that it is a well settled proposition of law that a company is a separate legal entity to its directors and shareholders and in view of the specific averment that there was a business dealings with defendant no.1 company, the directors cannot be made personally liable and be proceeded with in the civil suit. It was observed in the aforesaid case of **Gurmeet Satwant Singh (supra)** as under :

“11. Indubitably, a company incorporated under the Companies Act, whether as a private limited company or a public limited company, is a juristic entity. The decision of the Company are taken by the Board of Directors of a Company. The company acts through its Board of Directors, and an individual Director cannot don the mantle of the Company by acting on its behalf, unless he is o authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. It is equally well settled that a Director of Company though he owes a fiduciary duty to the Company, he owes no contractual duty qua third parties. There are, however, two **exceptions to this rule**. **The first** is where the Director or Directors

Contd....6

make themselves personally liable, i.e. by execution of personal guarantees, indemnities, etc. The **second** is where a Director induces a third party to act to his detriment by advancing a loan or money to the Company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money.”

**10.** In view of the aforesaid proposition of law, reverting to the instant case, the plaintiff company is failing to aver that the director(s) has made themselves liable by executing any personal guarantees or indemnities for the loan advanced to the defendant company nor there is made any allegations/pleadings that the director(s) made any fraudulent misrepresentation, Hence, the present applications are allowed and defendant nos.2 to 5 are held to be neither proper nor necessary parties to the suit, which continue can against defendant no.1. Hence, the names of each of the applicants are allowed to be struck off from the array of parties. The plaintiff is directed to file the amended memo of parties on or before the next date of hearing.

**11.** Now to come up for arguments on the pending application under Order XXXVIII Rule 5 CPC, on **09.09.2022**.

**(Dharmesh Sharma)**  
**Principal District & Sessions Judge**  
**New Delhi/23.07.2022**