

**IN THE COURT OF DISTRICT JUDGE-02
SOUTH-EAST DISTRICT, SAKET: NEW DELHI**

CS DJ No.75/2019

Rajesh Kumar Gupta

.....Plaintiff

versus

M/s. Oyster Constro Care Pvt. Ltd. & Ors.

.....Defendants

**ORDER
02.05.2026**

This order shall decide an application under Order 1 Rule 10 (2) CPC seeking striking out of name of defendant no.3, stating inter-alia that there is no cause of action against defendant no.3 who has no contractual and fiduciary relationship with the plaintiff nor she is involved in the transaction forming the basis of the suit. Further, the defendant no.3 is neither a director nor has any role or interest in the subject matter of the dispute and therefore, her inclusion as a party to the suit is without any legal basis.

2. Plaintiff filed reply to the aforesaid application, terming the same vexatious and baseless while stating that the defendant no.3, who is wife of defendant no.2, is the joint owner of the property, for which, agreement to sell was executed in favour of the plaintiff to pay the amount which was defaulted by defendant no.1.

3. Further, the defendant no.3 was party to negotiation with the plaintiff in relation to the property whereby defendants

no.2 and 3 agreed to pay an amount of Rs.2,09,398/- to M/s. BPTP Ltd. in order to clear the dues against the said property and Rs.44,25,567/- to M/s. India Bulls and remaining amount of Rs.51,15,567/- would be adjusted towards the dues payable by defendant to plaintiff. The terms of settlement were recorded in agreement to sell which was signed by plaintiff and defendants no.2 and 3 which agreement to sell was not honored by defendants no.2 and 3. The presence of defendant no.3 as a party to suit is necessary as no effective remedy can be passed in her absence.

4. I heard arguments advanced by Ms. Kritika Bajaj, learned counsel for plaintiff and Sh. Vishwendra Verma, learned counsel for defendants and perused the material available on record.

5. During the course of arguments, learned counsel for plaintiff has also relied upon the judgment passed by Hon'ble Supreme Court in Moreskar s/o Yadaorao Mahajan v. Vyanktesh Sitaram Bhedi (D) Thr. Lrs. & Ors. (Civil Appeal No.57555756 of 2011).

6. Having heard the submissions and perused the record, I find substance in the contentions of learned counsel for plaintiff.

7. Present is a suit filed by plaintiff against three defendants to recover a sum of Rs.1,04,96,394.37/-. It has been alleged that the defendant no.3, wife of defendant no.2, is co-owner of property bearing no. 1203 on 12th Floor in Tower 'G' of Park Gradeura, Sector 82, Faridabad, Haryana.

8. Further, plaintiff supplied various kind of building material, etc. to defendants no.1 and 2 and as per statement of accounts maintained by plaintiff, a sum of Rs.52,41,830/- became due and payable by defendants no.1 and 2 around second and third week of October, 2012.

9. To discharge the aforesaid liability for the goods purchased in the name of defendant no.1, defendants no.2 and 3 offered to sell their aforesaid property to the plaintiff and signed one agreement to sell dated 26.10.2012. Further, defendant no.2 for and on behalf of defendant no.1 issued a cheque dated 22.02.2013 in a sum of Rs.21,81,215/-, which on presentation, was dishonored.

10. Meanwhile, the plaintiff in discharge of his obligation in terms of agreement dated 26.10.2012 had paid a sum of Rs.1,91,079.37/- to M/s. BPTP Ltd. vide cheque dated 08.12.2012. Plaintiff requested defendants no.2 and 3 a number of times to sign and execute the transfer documents of the aforesaid property as well as documents/request letter to M/s. India Bulls for transfer/clearance of the loan amount due and payable against the said property and honor their obligation under the agreement to sell dated 26.12.2012, but in vain.

11. Plaintiff also got registered one FIR no.425/2014, P.S. Kotla Mubarak Pur under Section 420/406 IPC and filed the present suit.

12. It is worthy to note that the defendant no.1 through defendant no.2 has also filed one suit for recovery of

Rs.41,30,098/- from the plaintiff herein bearing CS DJ No.10576/2016 which is also pending before this Court.

13. In view of order dated 07.12.2018 passed by the Hon'ble High Court of Delhi for trying the present suit as Counter-Claim, issues were framed in both the suit on 16.11.2022, while observing that common evidence is to be led in both the suits.

14. In the afore-mentioned facts and circumstances, it is evident that there are allegations leveled against defendant no.3 in the plaint and plaintiff has prayed to pass a decree against the defendants to make the payment of suit amount severally and jointly.

15. In my considered opinion, the presence of defendant no.3 is necessary for effective and complete adjudication of the issues involved in the present suit and defendant no.3 is a necessary party to the suit.

16. The application under consideration appears to have been made in order to delay the trial and is accordingly dismissed with costs of Rs.3,000/- to be paid to the plaintiff positively on or before the next date of hearing.

17. The present application is accordingly disposed off.

**[Kuldeep Narayan]
District Judge – 02
South-East District,
Saket Courts, Delhi
02.05.2026/sk**