

IN THE COURT OF SH. SONU AGNIHOTRI
ADDITIONAL DISTRICT JUDGE-02, SOUTH EAST,
SAKET COURTS, NEW DELHI

CS No. 9220/16

M/S SHIV RAJ INTERNATIONAL PVT. LTD

..... Plaintiff

Versus

M/S PATEL ENGINEERING LIMITED AND OTHERS

.....Defendants

ORDER

22.05.2018

1. Vide this order, I shall dispose of an application filed by applicants/defendants no. 2, 3 and 6 U/o 7 Rule 11 r/w Order 1 Rule 10 (2) and Section 151 CPC.
2. In the application, it is stated that present application has been filed by applicants for rejection of plaint as no cause of action has been disclosed against them and present plaint is liable to be rejected against applicants in view of judgment in case titled as “ *Tristar Consultants Vs. M/s Vcustomer Services Pvt. Ltd. AIR 2007 Delhi 157*”.

3. It is stated that present suit is suit for recovery for alleged contractual breach by defendant no. 1 and not an action in tort and infact there is no averment of any tort being committed by applicants or any relief sought in consequence thereof.
4. It is stated that as the contract/ transaction is between defendant no. 1 and plaintiff and applicants (defendant no. 4 now deceased) have been wrongly and erroneously arrayed as defendants in the present suit.
5. It is stated that it is well settled that in a suit for recovery of money, only such persons can be impleaded as defendants against whom averments are made which on proof would entitle plaintiff to a decree whether jointly or severally or in the alternative against the said persons named as defendants. It is clear from the plaint that there is no cause of action disclosed against applicants including defendant no. 4 who is now deceased.
6. It is stated that it is not in dispute that in the plaint, there is no assertion against applicants including defendant no. 4 who is deceased that either of them personally undertook or agreed to clear any liability of defendant no. 1 allegedly outstanding against plaintiff. It is stated that no guarantee or indemnification is alleged to have been signed by applicants including defendant no. 4 since deceased and infact none signed.
7. It is stated that it is well settled that company is a juristic person who has to act through living human being. It is stated that decisions on behalf of company are taken by Board of Directors of a

Company and an individual Director has no power to act on behalf of company of which he is a director unless there is specific resolution of Board of Directors giving him specific power in this regard.

8. It is stated that Director/ Officer of a company cannot be made a defendant in an action for recovery of damages alleging breach of contract or non-payment by the company. It is stated that present matter is suit for recovery of money for alleged non-payment by defendant no. 1 and not an action in tort.
9. It is stated that in the context as mentioned above, present suit is ought to be dismissed in Limine.
10. It has been prayed to reject the plaint in exercise of power under Order 7 Rule 11 r/w Order 1 Rule 10 (2) and Section 151 CPC.
11. Reply to the application was filed by plaintiff.
12. Plaintiff/non-applicant took certain preliminary objections.
13. It is stated that plaint as filed by plaintiff is required to be read for deciding present application. It is stated that applicants are necessary party to present suit and directly connected with transaction in issue and as such present plaint cannot be rejected partly qua them.
14. On reply on merits, contents of the application have been denied. It is stated that facts of the judgment mentioned are not applicable to facts of present case. It is stated that plaint contains specific assertions qua applicants and plaintiff has claimed relief of mandatory injunction also besides seeking relief of recovery. It is admitted that company is a juristic person. It is stated that plaint very

well discloses cause of action against all defendants.

15. It has been prayed to dismiss the application with special and compensatory costs.
16. I have heard arguments addressed by respective counsels and perused the record including judgment filed on behalf of applicants.
17. Plaintiff has filed present suit for recovery of money and mandatory injunction against defendants. Decree for recovery of money against defendants has been sought individually, jointly, severally, co-extensively and separately. In the plaint, averment against applicants including defendant no. 4 is that as per work order agreed, transit mixers of plaintiff started working at site of defendant no. 5 on request and order of defendant no. 1 through its Directors/ Employees, defendants no. 2 to 4 and 6. It is further averred that defendant no. 1 placed work order to plaintiff company for rendering services on site of defendant no. 5 through its Directors i.e. applicants. It is further averred that defendants no. 2 to 4, 6 are Directors of defendant no. 1 who have availed services of plaintiff and might have taken payment thereof which had been utilized by them for their own use and benefits under face of defendant no. 1 which is a Private Limited Company and defendants no. 2 to 4, 6 are real beneficiaries of services rendered by plaintiff company on instructions and orders of defendants.
18. There are no other specific averment against applicants including defendant no. 4 in the plaint filed by plaintiff except as

mentioned above, From pleadings of plaintiff as mentioned above, it is clear that no personal guarantee/ undertaking has been taken by applicants for sum due towards plaintiff company and that defendant no. 1 is a Private Limited Company.

19. Judgment in case titled as “ *Tristar Consultants Vs. M/s Vcustomer Services Pvt. Ltd. ILR (2007) I Delhi 1053*” has been filed by applicants wherein it has been held as below:

20. “ 13. *In a suit for recovery of money, only such persons can be impleaded as defendants against whom averments are made which on proof would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said person named as defendants.*

14. The other facet of the aforesaid proposition of law is that there must be a cause of action disclosed against a person impleaded as a defendant.

15. Learned Counsel for the petitioner did not dispute that in the plaint there is no assertion against defendant no. 2 that he personally undertook or agreed to clear any liability of the defendant outstanding against the plaintiff. No guarantee or indemnification has been pleaded.

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19. It is settled law that a company is a juristic person. Therefore, a company has to act through a living human being. Collectively, decisions on behalf of the company,

are taken by the Board of Directors of a Company. An individual Director has no power to act on behalf of a company of which he is a Director, unless there is a specific resolution of the Board of Directors of the Company giving specific power to him/her or, where the articles of company confer such an power.

20. Directors of Companies have been described as agents, trustees or representatives of the company because of the fact vis-a-vis the company they act in a fiduciary capacity. They perform acts and duties for the benefit of the company. Thus, Directors are agents of the company to the extent they have been authorized to perform certain acts on behalf of the company.

21. But the Directors of a company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company.

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22. Directors of a company are referred to as agents of the company in the context of their fiduciary duty to the company and therefore if they derive any personal benefit while purporting to act on behalf of the company, they will be liable to the company and its shareholders. But the Directors cannot be treated as acting as agents of the company, in the conventional sense of an agent, vis-a-vis third parties.

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28. To interpret the law as is sought to be projected by the petitioner would mean negation of the concept of a company being limited by its liability as per the memorandum and articles of association of the company. Other than where Directors have made themselves personally liable i.e. by way of guarantee, indemnity etc liabilities of Directors of a company, under common law are confined to cases of malfeasance and misfeasance i.e. where they have been guilty of tort towards those to whom they owe a duty of care i.e. discharge fiduciary obligations. Additionally, qua third parties, where Directors have committed tort. To the third party, they may be personally liable.”

21. In the present case also, applicants including defendant no. 4 have been arrayed as parties to present suit by plaintiff as Managing Director/Directors /official of defendant no. 1 company. It has not been said by plaintiff that any of the applicant indemnified or gave personal guarantee to plaintiff for discharging liability of defendant no. 1 towards plaintiff. The suit filed by plaintiff is for recovery and mandatory injunction and as such not for any tort. Directors /officials of defendant no. 1 company may be liable to the defendant no. 1 company and its shareholders but in view of law as discussed above, they cannot be treated as acting agents of company vis-a-vis third parties which in the present case is plaintiff company. It

is also well settled that a company is a juristic entity by itself and as such defendant no. 1 company can be sued by plaintiff for its dues and for relief of mandatory injunction and in absence of any averments, applicants including defendant no. 4 are not personally liable for liability of defendant no. 1 company.

22. Though it cannot be said that plaint as a whole is to be rejected as plaintiff do have cause of action against defendant no. 1 but has no cause of action qua applicants including defendant no. 4. In view of my above-made discussion, I am of the view that application of applicant deserves to be allowed and is accordingly allowed.

23. Plaint filed by plaintiff is rejected qua defendants no. 2 to 4 and 6 being without disclosing any cause of action.

**Announced in the open Court
on 22nd May, 2018**

**(Sonu Agnihotri)
Addl. District Judge -02 (South-East),
Saket Courts, New Delhi**