

CS DJ No:- 50/21

**M/S BABA VENTURES PRIVATE LIMITED Vs. KIDAR NATH
BABBAR & Ors.**

23.01.2023

Present:- Sh. B. P. Lathwal, Ld. Counsel for plaintiff.
Sh. Maheswar Dass, Ld. Counsel for defendant no. 1.
Ms. Promila Kapoor, Ld. Counsel for defendant no. 3
i.e. DDA.

Reply filed on behalf of plaintiff to the application under Order I Rule 10 CPC moved on behalf of defendant no. 3. Copy supplied.

Vide present application, it is submitted on behalf of defendant no. 3 that this is a suit filed by plaintiff seeking damages against defendant no. 1 for alleged malicious prosecution in previous Civil Suit bearing no. 51123/2016 and RCA DJ No. 108/2018. It is submitted on behalf of applicant/defendant no. 3 that there is no challenge to the factum of findings passed in the aforesaid proceedings and in the absence of any specific relief sought by plaintiff against applicant/defendant no. 3 in the present suit, defendant no. 3 is neither necessary nor proper party and must be deleted from the array of parties.

In reply to the present application, it is submitted on behalf of plaintiff that defendant no. 3 i.e. DDA was the main party in previous proceedings i.e. Civil Suit bearing no. 51123/2016 and RCA DJ No. 108/2018, hence, its presence is required to prove that the said proceedings were false, frivolous and malicious. It is admitted in the reply that plaintiff has no claim against defendant no. 3 but defendant no. 3 is required to be impleaded as its presence is necessary for deciding the real controversy between the parties.

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Submissions heard. Record perused.

Suffice it to say, it is apparent from the record as well as reply filed by the plaintiff itself that no specific claim is sought by the plaintiff against defendant no. 3 in the present proceedings which is a suit for recovery of damages against defendant no. 1 for alleged malicious prosecution. The factum of findings passed in the previous proceedings i.e. Civil Suit bearing no. 51123/2016 and RCA DJ No. 108/2018 are matter of record and not disputed by either of the parties. Even otherwise, the said record can be called during trial by the plaintiff for which attendance of defendant no. 3 is not required.

In these circumstances, **application under Order I Rule 10 CPC stands allowed. As such, defendant no. 3 is deleted from the array of the parties.** Plaintiff is directed to file amended memo of parties to that effect.

Reply to the application under Order VII Rule 11 CPC is already on record on behalf of plaintiff.

Put up for arguments on the application under Order VII Rule 11 CPC for **28.04.2023**.

(Akash Jain)
ADJ-1 (South-East), Saket Court
New Delhi/23.01.2023