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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 75/2018**
M/S ARCH EFFECTS

.....Plaintiff

Through: Mr. Deepak Nagar, Adv.

versus

M/S WHITE EAGLE ENTERTAINMENT PVT. LTD. & ORS

.....Defendant

Through: None for D-1 & D-2.
Mr. Rishabh Bansal & Ms. Himanshi
Malhotra, Advs. for D-3.
*Right of D-4 & 5 to file WS closed
vide order dated 12/11/2021.*

CORAM:
JOINT REGISTRAR (JUDICIAL) SH. DEVENDER KUMAR
GARG (DHJS)

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ORDER
27.09.2022

I.A. No. 11379/2018 (u/O I Rule 10 (2) CPC for striking out of the name of defendant no.3 from the array of parties in present suit)

1. Today the matter is listed for order on the captioned IA.
2. The captioned IA has been moved on behalf of defendant no.3 under Order I Rule 10(2) CPC for striking off name of defendant no.3 from array of parties.
3. The brief facts necessary for disposal of the present IA as per application are that the defendant no.3 has no role to play in the alleged transaction which took place between the plaintiff and



defendant no.1 with respect to alleged renting out of Martin Audio Sound System and there has been no association between the plaintiff and defendant no.3 and there is no cause of action that has arisen in favour of the plaintiff and against the defendant no.3 and thus, the defendant no.3 cannot be made liable for the alleged debt of defendant no.1 towards the plaintiff either jointly or severally. It is further averred that on 21.05.2011, the defendant no.3 entered into lease agreement with Ambience Developers & Infrastructure Pvt. Ltd. for leasing out Retail Space admeasuring 4524.5 sq. mtrs., on 4th and 5th Floor of the Ambience Mall Complex (hereinafter referred to as the "Premises"). It is further averred that Rockman Breweries (TNK) Ltd. herein Defendant No.4, which is presently in liquidation, also leased out space in the Ambience Mall Complex. It is further averred that defendant. No.3 and defendant No.4 intended to integrate their retail spaces and open a night club in the said integrated space. It is further averred that the plaintiff never had any association with defendant no.3 and it was defendant no.2, who had approached defendant no.3 and represented that it can avail a music system from a company named Martin Audio, U.K for its night club. It is further averred that the defendant no.3 is neither required as a proforma-party or as a necessary party.

4. Reply to the captioned IA has been filed on behalf of the plaintiff inter-alia stating that the defendants no.3 and 4 were sister companies and were sharing premises and were jointly running



the night club and due to winding up of defendant no.4 company the Official Liquidator appointed by Hon'ble High Court seized the space shared by the defendants no.3 and 4 wherein the plaintiff's sound system equipment, which was leased to the defendants no.1 and 2, were installed. It is further averred that in the winding up proceedings pending before Hon'ble High Court bearing C.P. No. 159/2010, the plaintiff filed an application bearing no. 2098/2013 seeking permission from the court for release of the sound equipment which were leased out to defendant no. 1 and 2, in that application, defendant no.3 filed its reply categorically objecting the relief sought by the plaintiff on the ground that defendant no.3 has the right of lien over the sound equipment until the defendant no.1 clears all the dues of defendant no.3. It is further averred that since the defendant no.3 has objected the application filed before the Company Court for release of his sound equipment which is in custody of Official Liquidator/defendant no.5, therefore, defendant no.3 is necessary party in the present suit.

5. It is further averred in reply that cause of action arose against the defendant no.3 when defendants no.1 and 2 (being the lease holder of sound equipment of plaintiff) had an agreement for further letting out the sound equipment to the defendant no.3 company. It is further stated that plaintiff has already filed a complaint against defendant no.1 and 2 for illegal possession, cheating and sub-leasing the sound system without permission of the plaintiff. It is further stated that defendant no.3 is liable to



compensate the losses occurred by the plaintiff due to the malafide intention of defendant no.1 and 2 in connivance with defendant no.3. It is further averred that the plaintiff has been cheated by the defendants no.1 to 4 by not returning his valuable goods i.e. sound system, therefore, all the defendants are jointly liable to compensate the plaintiff.

6. Rejoinder to the reply was filed on behalf of the defendant no.3 wherein he reiterated the entire contents made in the application and denied the averements made in the reply filed on behalf of the plaintiff.
7. No reply to the captioned IA filed on behalf of defendants no.1 and 2 despite sufficient opportunities given.
8. I have already heard Mr. Deepak Nagar alongwith Mr. Nikhil Kohli, Advs. for plaintiff and Mr. Rishabh Bansal, Adv. for defendant no.3 and perused the material available on record carefully. Learned counsel for defendant no.3 has relied upon the judgment titled “Sicpa India Pvt. Ltd. vs. Kapil Kumar & Ors.” 2014 (145) DRJ 37.
9. Perusal of the file would show that the plaintiff has filed the present suit wherein he has sought following reliefs: -

- (i) Pass a decree in favour of the plaintiff and against the defendants thereby directing the defendants No.1 and No.2 to pay an amount of Rs. 1,00,00,000/- (One Crore Only) towards cost of goods.



(ii) Pass a decree in favor of the plaintiff and against Defendant No.1 to Defendant No.5 by directing them to pay of an amount Rs. Rs.7,04,00,000/- (Rupees Seven Crore Four Lac Only) for the loss business.

10. Perusal of document Annexure-A10 filed on behalf of plaintiff would show that an application under Rule 9 of Companies (Court) Rules, 1959 for de-sealing of the premises was moved on behalf of the applicant (plaintiff herein) wherein prayer has been sought to remove the Martain Audio Sound System from the premises. Copy of application filed on behalf of defendant no.3 dated 02.11.2017 before the Company Court objecting the release of Martin Audio Sound System to the plaintiff herein, is on record as Annexure-A17.
11. In the reply filed on behalf of the plaintiff, it has been averred that defendant no.3 is liable to compensate the losses occurred by the plaintiff due to the malafide intention of defendant no.1 and 2 in connivance with defendant no.3. It is further averred that the plaintiff has been cheated by the defendants no.1 to 4 by not returning his valuable goods i.e. sound system, therefore, all the defendants are jointly liable to compensate the plaintiff.
12. It is also case of plaintiff that sublease of Martin Audio System by defendants no.1 and 2 to defendant no.3 is illegal as the same was without permission from plaintiff.
13. Thus, keeping in view the relief sought by the plaintiff in his plaint, material available on record, the undersigned is of the



view that the defendant no.3 is proper and necessary party and hence, the captioned IA for deletion of name of defendant no.3 from array of parties is without any merit and the same stands dismissed accordingly. The judgment relied upon by Learned counsel for defendant no.3 is not applicable to be facts of the present case being distinguishable on facts.

14. The captioned IA stands disposed off accordingly.

I.A. No.861/2021 (u/S 5 of Limitation Act r/w Section 151 CPC filed on behalf of defendant no.1 & 2 for condonation of delay of 39 days in filing the written statement)

1. Re-notify the captioned IA for compliance of the order dated 20.09.2022 on **24th November, 2022.**

CS(OS) 75/2018

1. Re-notify the matter for compliance of the order dated 20.09.2022 on **24th November, 2022.**

**DEVENDER KUMAR GARG (DHJS)
JOINT REGISTRAR (JUDICIAL)**

SEPTEMBER 27, 2022/v

Click here to check corrigendum, if any