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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 561/2023 & I.A. 15451/2023 I.A. 15453-15454/2023
I.A. 19423/2023 I.A. 22252/2023 I.A. 24479/2023 I.A. 729/2024 I.A.
1508/2024 I.A. 5533/2024 I.A. 5564/2024
MRS KANIKA GAUTAMPlaintiff
Through: Mr. Deepak K. Sharma, Adv.
versus
M/S FLASH CLOUD CONSULTING & ORS.Defendants
Through: Mr. Pankaj Bhagat, Adv. for D-2
Mr. Kunal Vashisht, Mr. Ankit
Vashisht, Mr. Dilpreet Singh, Adv.
for Rajeev Saxena (proposed
defendant)
Ms. Anusha, Adv. for D-3/ICICI
Bank. (Through VC)

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **02.08.2024**

1508/2024(Application on behalf of the plaintiff under Order VI Rule 17 read with Section 151 of the Civil Procedure Code, 1908 seeking amendment in the list of dates and events filed along with the plaint.)

1. This is an application filed by the plaintiff seeking to amend a typographical error which has crept into the list of dates accompanying the plaint.
2. Learned counsel for the plaintiff states that the proposed amendment to the list of dates has been set out in paragraph 7 of this application.
 - 2.1. He states in the plaint, the plaintiff has averred that defendant no. 2 has diverted funds from defendant no. 1 firm amounting to more than Rs. 5 crores. He states, however, inadvertently in the list of dates, this averment has been incorrectly pleaded as more than Rs. 50 crores. He states that



plaintiff proposes this amendment to bring it in consonance with the averments in the plaint.

3. Learned counsel for the defendant no. 2 states that while he has no objection to the amendment to the list of dates; he, however, states that in some paragraphs of the plaint such as paragraph 44, the plaintiff has also made reference to misappropriation of funds to the extent of Rs. 10 crores. He states that defendant no. 2 has raised an objection that the plaintiff has failed to file an ad-valorem court fee on this claim of Rs. 10 crores.

4. In response, learned counsel for the plaintiff states that he does not propose to make any amendment to the said averment at paragraph 44 of the plaint.

5. In view of the fact that the plaintiff is only seeking to amend his list of dates, the application is hereby allowed without prejudice to the rights and contentions of the defendant no. 2, qua the legal effect of pleading at paragraph 44 of the plaint.

6. The amended list of dates is taken on record.

I.A. 15451/2023 (u/S 12A of the Commercial Courts Act by plaintiff)

7. This is an application filed by the plaintiff under Section 12A of the Commercial Court Act, 2015 seeking exemption from pre-litigation mediation.

8. Learned counsel for the defendant no. 2 states that the defendant no. 2, infact prays that the parties be kindly referred to mediation, as this is a fit case for exploring the mediation process. He states that since the partnership firm owns assets mediation process will assist the parties to settle the disputes amicably.



9. In response, learned counsel for the plaintiff states that he has no objection to the said suggestion.

10. Accordingly, parties are hereby referred to Delhi High Court Mediation and Conciliation Centre (DHCMCC).

11. This Court takes note of the fact that defendant no. 1 is a partnership firm of plaintiff and defendant no.2 in respect whereof plaintiff has taken a stand that the said partnership firm i.e. defendant no. 1 stands dissolved.

12. In view of the aforesaid directions, the application stands disposed of.

13. List before the Mediation Centre on 20.08.2024 at 03:00 PM.

I.A. 19423/2023(Application on behalf of defendant no. 2 under Order 26 Rule 9 and 10(b) and (c) r/w S. 151 CPC

14. Learned counsel for the defendant no. 2 states that vehicle no. HR 51BX 9010 ('Car') has been recovered from the possession of Mr. Rajeev Saxena, the same is presently a case property in FIR No. 0209/2024 and is lying wastefully in the police station of Kalkaji, Delhi. He states it would be in the interest of parties that the vehicle is sold and the proceeds are deposited before this Court as it would enable the parties at the stage of rendition of accounts.

15. Mr. Kunal Vashisht has entered appearance on behalf of Mr. Rajeev Saxena and states he has no objection to the proposed sale of the Car.

16. Learned counsel for the plaintiff states that he has no objection to the proposed sale without prejudice to his rights with respect to rendition of accounts.

17. In view of the aforesaid consensus of the plaintiff, defendant no. 2 and Mr. Rajiv Saxena, the defendant no. 2 who is a complainant in the FIR No. 0209/2024 is hereby granted leave to take permission from the appropriate



criminal Court for release of the Car in his custody to enable sale of the Car as per the terms and conditions set out herein.

18. The plaintiff and defendant no. 2 are hereby directed to authorized the sale of this Car through a re-seller CARS24. The amount realised from the sale shall be recovered in the name of defendant no. 1 and deposited by the parties with the worthy Registrar General of this Court within one week from receipt. The CARS24 will be entitled to retain their usual brokerage commission. Plaintiff and defendant no. 2 will sign all necessary papers to enable the sale of Car in favour of the prospective purchaser.

19. The amount once received will be kept by the registry in the form of a Fixed Deposit Receipt (FDR) and its distribution will abide further orders from this Court.

I.A. 5533/2024 (condonation of delay in filing the written statement by defendant no. 2)

20. This is an application filed by defendant no. 2 seeking condonation of delay of 8 days in filing the written statement beyond the initial party of 30 days.

21. For the reason stated in the application, the application is allowed, subject to defendant no. 2 paying costs of Rs. 5,000/- to Ms. Arpana, a young lady who recently suffered injuries due to fall of a portion of the roof on her in the Delhi High Court premises. The costs of Rs. 5,000/- will be paid to her within a period of one (1) week by remitting the same to her on the below mentioned bank account: -

*Ms. Arpana, DL7944
D/O Sh. Anand Kumar
A/C No. 0620000101639462
Bank: Punjab National Bank
Aadhar No. 578449872364*

22. The proof of payment shall be filed with the registry within two



weeks. Subject to payment of costs, the written statement shall be taken on record.

I.A. 5564/2024 (Application for condonation of delay in filing of reply on behalf of defendant no. 2 of IA no. 15453 of 2023 under section 151 of the CPC)

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23. This is an application filed by defendant no. 2 for condonation of delay of 48 days in filing reply to I.A. No.15453/2023.

24. The application was allowed vide order dated 11.03.2024. The registry is directed to take note of the same and not show the application as pending.

I.A. 729/2024 (under Order 1 Rule 10 for impleadment on behalf of Defendant no. 2)

25. This is an application filed on behalf of defendant no. 2 seeking impleadment of Mr. Rajeev Saxena as a party defendant.

26. Learned counsel for the defendant no. 2 states on instruction that in view of the statement of the counsel for Mr. Rajeev Saxena recorded in I.A. No. 19423/2023 i.e. consenting to the sale of the Car, defendant no. 2 does not press for this application any further.

27. Binding Mr. Rajiv Saxena to the statement made before this Court today, the present application is disposed of.

I.A. 22252/2023 (under Order 1 Rule 10 CPC filed on behalf of plaintiff to implead IndusInd Bank as necessary defendant)

28. This is an application filed by the plaintiff seeking impleadment of (i) IndusInd Bank, Branch at Sector-21, Faridabad, Haryana and; (ii) M/s V.N. Purohit & Co. Chartered Accountants as the necessary parties.

29. Mr. Arjun Kochar, learned counsel for the defendant IndusInd Bank



has entered appearance and states that he is neither a necessary nor a proper party. He confirms the existence of a bank account with Faridabad, Haryana Branch in the name of the partnership firm i.e. defendant no. 1 and further undertakes that the IndusInd bank will abide by all the orders passed by this Court. He states, however, impleadment of IndusInd Bank is neither a necessary nor proper in these proceedings.

30. Learned counsel for the applicant/plaintiff states that in view of the aforesaid statement made by the learned counsel for the IndusInd Bank/non-applicant, plaintiff has no objection to withdrawing the prayer for its impleadment while reserving rights to summon the IndusInd Bank as a witness during trial.

31. Accordingly, while reserving the right of plaintiff to summon the IndusInd Bank as witness, in accordance with law: the prayer for impleadment of IndusInd Bank is hereby dismissed as withdrawn. The IndusInd Bank is exempted from further appearance in these proceedings.

32. List before the Court on 19.11.2024.

MANMEET PRITAM SINGH ARORA, J

AUGUST 2, 2024/hp/ms