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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 625/2010**

M/S YAHOO EXPORTS PVT LTD Plaintiff

Through Mr. Animesh, Advocate

versus

MANJIT KAUR & ORS

..... Defendants

Through

**Ms. Richa Kapoor, Advocate for D-4
Mr. A. K. Padhy, Advocates for
defendants for D-2 and D-3
Mr. S. K. Sharma, Advocate for
applicant**

CORAM:

SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR

ORDER

% 17.05.2017

IA No. 6041/2017 (under Order I Rule 10 (2) CPC filed by Mr. Sunil Kumar Malhotra)

Learned counsel for the applicant submits that copies of the IA were sent to learned counsel for the parties. Plaintiff has engaged new counsel. Copy was sent to the earlier learned counsel. Learned counsel for defendant No.4 also submits that her address has changed. At this stage, copies of the IA supplied by learned counsel for the applicant to learned counsel for the parties.

Before issuing notice of the IA to the parties to the suit, I deem it appropriate to decide whether there are grounds to entertain this application and call the parties to reply to the IA. I have heard the submission made by learned counsel for the applicant. Learned



counsel for defendant No.4 submits that the applicant cannot seek impleadment in the present matter. Learned counsel for the defendants No. 2 and 3 also make same submission. He has pointed out that the MOU relied upon by the applicant is not registered and therefore, it cannot be looked into. In support of his arguments, learned counsel for the applicant relies upon the citations AIR 2016 All 15(A) and AIR 2016 Kar 132 (A) from the AIR manual. Copies of these citations are not available with learned counsel for the applicant. The note regarding the second citation as mentioned in the manual is that a transferee pendente lite should be impleaded.

Put up for order after lunch.

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Learned counsel for plaintiff submits that there is bereavement in the family of the PW and therefore, he could not come today. Request also made to cancel the date of 18.05.2017. Adjournment is allowed for today. Date of 18.05.2017 is also cancelled. Date will be given after lunch.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

MAY 17, 2017/ms
After lunch

IA No. 6041/2017 (under Order I Rule 10 (2) CPC filed by Mr. Sunil Kumar Malhotra)

1. The IA has been moved under Order I Rule 10 (2) CPC only but discussion of Order XXII Rule 10 CPC and Section 52 of Transfer of Property Act will also be required in view of the second citation



relied upon by learned counsel for the applicant.

2. This is a suit for specific performance filed by the plaintiff against defendants No.1to4 in respect of property No. 18/49, East Patel Nagar, New Delhi. It is stated in the IA that defendant No.4 did not inform the applicant about interim order dated 07.04.2010 whereby exparte ad interim injunction was passed against defendants No.1to4 restraining them from alienating the property. It is further stated that defendant No.4 took loan of Rs.14 lacs from the applicant in 2014-15 and handed over possession of two rooms on 2nd floor of the suit property. It is also stated that defendant No.4 has taken money from many other persons on the pretext of selling the property without disclosing the stay order dated 07.04.2010. According to the applicant, his impleadment is necessary to adjudicate upon and settle all questions involved in title / possession of the suit property.
3. This is a suit for specific performance between the plaintiff and defendants No.1to4. Applicant claims to be in possession of a portion of the suit property in pursuance of a loan allegedly obtained by defendant No.4. The alleged transaction between the applicant and defendant No.4 is not in any manner related to the dispute between the plaintiff and defendants No.1to4. Presence of the applicant in the present suit is not required for effectively adjudicating the issues and it is also not the case that without presence of the applicant no effective decree can be passed. Therefore, for adjudication of the disputes between plaintiff and defendants No.1to4 the applicant is neither a proper nor a



necessary party to the suit.

4. The applicant also does not meet the criteria for substitution under Order XXII Rule 10 CPC r/w Section 52 of Transfer of Property Act. The criterion for substitution under these provisions have been laid down by Hon'ble Supreme Court in the matter of Amit Kumar Shaw Vs. Farida Khatoon (2005) 11 SCC 403.
5. Each case is to be decided on the basis of its own facts. Applicant cannot rely upon notes of some other case without demonstrating that the facts of the present case are also same or substantially same to the facts of the case on which reliance has been placed.
6. Learned counsel for defendants No. 2 and 3 rightly pointed out that the applicant cannot claim right on the basis of unregistered MOU against alleged loan. However, I will not go into this aspect in detail as it has already been held that the applicant cannot be impleaded under Order I Rule 10 CPC and he can also not be substituted under Order XXII Rule 10 CPC.
7. In view of above discussion IA is dismissed.

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Adjourned to 21st and 22nd September, 2017 for PE.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

MAY 17, 2017
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