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

CS(COMM) 387/2016

TANYA HEALTHCARE & ORS

..... Plaintiffs

Through: Mr. Bharti Badesra and Mr. Adarsh
Priyadarshi, Advs.

Versus

H.S.C.C. (INDIA) LTD & ORS

..... Defendants

Through: Mr. Saurabh Mishra and Mr.
Abhishek Singh, Advs. for D-1.
Mr. Jaswinder Singh, Adv. for D-2&3

AND

+ CS(COMM) 395/2016

JENSON FINVEST PVT LTD

..... Plaintiff

Through: Mr. Bharti Badesra and Mr. Adarsh
Priyadarshi, Advs.

Versus

H.S.C.C. (INDIA) LTD & ORS

..... Defendants

Through: Mr. Saurabh Mishra and Mr.
Abhishek Singh, Advs. for D-1.
Mr. Jaswinder Singh, Adv. for D-2&3

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.05.2019**

**IA No.1770/2018 in CS(COMM) No.387/2016 & IA No.1771/2018 in
CS(COMM) No.395/2016 (both of plaintiff in each of the suits for
amendment of the complaints)**

1. The counsel for the plaintiff in both the suits has argued, (i) that the plaintiff in both the suits have sued for recovery of monies claimed to be due from the defendant No.1 in each of the suits; (ii) however, besides the defendant No.1, the Additional Director, CGHS Medical Store Depot and the Deputy Director General (St.), Directorate General of Health Services, CS(COMM) 387/2016 & CS(COMM) 395/2016

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New Delhi have also been impleaded as defendants No.2&3 in both the suits; (iii) that the defendant No.1 in each of the suits in its written statement has pleaded that since in the matter of contract with the plaintiff in each of the suits, the defendant No.1 was acting as an agent of disclosed principal i.e. defendants No.2&3, the defendant No.1 is not liable; and, (iv) that the plaintiff in each of the suits thus has applied for amendment of the plaint to seek recovery of monies jointly and severally from all the defendants.

2. The counsel for the defendant No.1 in each of the suits states that he has no objection.

3. The counsel for the defendants No.2&3 in each of the suits, though also contends that the defendant No.1 was not acting as the agent of defendants No.2&3 but the said contention is a question on merits of the amendment and which is not to be gone into at this stage.

4. The principal contention of the counsel for the defendants No.2&3 is that in the suit as instituted, no claim was made against the defendants No.2&3 and the claim now sought to be made against defendants No.2&3 is barred by time.

5. Though the counsel for the plaintiff in each of the suits and the counsel for the defendants No.2&3 in both the suits are at variance as to which Article of the Schedule to the Limitation Act, 1963 will apply, with the counsel for the plaintiff in both suits controverting that the suit claim is barred by time, but again that is a question on merits of the amendment and which is not to be gone into at this stage.

6. Section 21 of the Limitation Act provides that where, after the institution of a suit, a new plaintiff or a defendant is substituted or added, the

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suit shall as regards him, be deemed to have been instituted when he was so made a party.

7. The same would govern the apprehension of the counsel for the defendants No.2&3 qua limitation.

8. It is however open to the parties to, at the time of framing of issues or final arguments, as may be appropriate, contend that Section 21 of the Limitation Act does not apply owing to the defendants No.2&3 being already a party and that the Proviso to Section 21 of the Act is to apply.

9. On the aforesaid terms, the applications are allowed and disposed of.

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10. The amended plaint stated to have been filed are taken on record.

11. Though the right of the defendants No.2&3 to file written statement in both the suits stood closed but in view of amendment of plaints, the defendants No.2&3 are now entitled to file the written statement.

12. The defendants to file written statements thereto within the prescribed time.

13. Replications, if any thereto be filed within further thirty days thereafter.

14. The parties to file affidavits of admission/denial of each other's documents before the next date of hearing.

15. List for framing of issues, if any on 20th August, 2019.

RAJIV SAHAI ENDLAW, J.

MAY 01, 2019

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