

OCD-5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA No.GA-COM 3 of 2024
In
CS-COM 1 of 2024

KONSORTIA PROJECT PRIVATE LIMITED
VS.
MOHIT LAL SEAL & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 28th February, 2024.

Mr. Rittick Chowdhury, Mr. Dwip Raj Basu, Advocates
for plaintiff.

Mr. Rahul Karmakar, Mr. S. K. Poddar, Mr. Arbir Lal
Chakravorty, Advocates for defendant no.10/petitioner.

Mr. Shounak Mukhopadhyay, Mr. Kallol Saha, Mr. Akash Ghosh,
Ms. Monika Roy, Advocates for defendant no.12.

The Court : Affidavit of service filed in Court today is taken on record.

This is an application by the defendant no.10 in the suit *inter alia* for expunging its name from the array of defendants.

On behalf of the defendant no.10 it is submitted that no relief in particular has been claimed against the said defendant. The averments in the plaint also do not disclose any cause of action in favour of the plaintiff as against the defendant no.10. The defendant no.10 is neither a necessary nor a proper party to the suit and as such its name should be expunged.

On perusal of paragraph 6 of the plaint it is apparent that the plaintiff has stated therein about a registered deed of lease between defendant nos.1 and 2 to 9 dated 11th October, 2012 by and under which the said

defendants had let out their respective portions to the defendant no.10. Some of the relevant terms of the lease dated 11th October, 2012 are also set out in paragraph 6 of the plaint. In paragraph 7 the plaintiff has alleged that the defendant no.1 informed the plaintiff that the defendant no.10 had defaulted in payment of lease rent for the past four years. In paragraph 8 of the plaint it is stated that the plaintiff would provide a sum of Rs.7,20,00,000/- to the defendant nos.1 and 2 to 9 which would be utilized by the said defendants to settle with the defendant no.10 and obtain vacant possession of the said premises. In paragraph 13 of the plaint it has been stated that the defendant nos.1 and 2 to 9 were to execute a formal agreement in terms whereof the defendant no.10 would surrender the said lease and vacate the premises. According to the plaintiff, the defendant nos.1 and 2 to 9 have stated in paragraph 13 about the said defendants having represented to the plaintiff that the deed of surrender and/or settlement with the defendant no.10 had been finalized but could not be executed due to the demise of Arun Mehra who was the Karta of defendant no.10 in December, 2022. In paragraph 15 of the plaint it has been stated that the defendant nos.10 and 11 have sub-leased the said premises to defendant no.12 by a deed of sub-lease dated 10th November, 2023. In paragraph 18 of the plaint it has been further alleged that the defendant nos.10 to 12 have removed the furniture and fixture of the cinema theatre including the chairs which were affixed to the ground floor of the said cinema theatre. In paragraph 22 it is also alleged that the defendant nos.1 and 2 to 9 have fraudulently colluded with defendant no.10 and actively assisted the said defendants to enter into the deed of sub-lease. Similar

allegations are also there in the rest portion of the various sub-paragraphs of paragraph 22. There are also allegations against the defendant no.10 in paragraphs 23, 25, 26 and 27. The reliefs in prayer (c) and (d) are also directed against all the defendants including the defendant no.10.

In this background, it cannot be held at this stage when written statement has also not been filed that the defendant no.10 is neither a necessary nor a proper party.

The application, therefore, fails and is accordingly dismissed.

Since I have not called for any affidavit and have proceeded to decide the matter on the basis of the averments made in the plaint following the principles analogous to that used in deciding an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the allegations contained in the application are deemed to have not been admitted by the plaintiff and the other defendants.

(ARINDAM MUKHERJEE, J.)