

OCD-9

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

In CS-COM/669/2024
IA No. GA-COM/4/2024

M/S. S G KAREL AND SONS JEWELLERS PVT LTD.
-VS-
M/S. MADAN LAL AGARWALLA JEWELLERS AND OPS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : February 18, 2025.

Appearance:

Mr. Gunjan Shah, Adv.
Ms. Livia Parveen, Adv.
Ms. Soumili Sarkar, Adv.
...for the plaintiff

Mr. Chayan Gupta, Adv.
Mr. Pranay Mukherjee, Adv.
Mr. Pourush Bandopadhyay, Adv.
,,,for the defendant Nos.1 to 4

The Court: Mr. Gunjan Shah, learned Counsel, is appearing for the plaintiff.

Mr. Pourush Bandopadhyay, learned Counsel, is appearing for the defendant Nos.1 to 4.

The defendant No. 4 has filed the present application being GA-COM/4/2024 praying for deletion of the name of the defendant No.4 from the suit on the ground that no cause of action shown in the plaint and there is no jural relationship between the plaintiff and the defendant No.4.

Counsel for the defendant no.4 has drawn the attention of this Court to the several paragraphs of the plaint wherein simply the plaintiff has made an averment that the defendant Nos. 2 to 4 have jointly and severally introduced themselves as the partners of the defendant No.1 and also responsible for the day to day working of the defendant No.1 firm.

Counsel for the defendant No.1 has relied upon the registration certificate of the firm Madan Lal Agarwalla Jewellers, who is the defendant No.1 company. As per the said document the defendant No.2 and the defendant No.3 as well as defendant No.1 Rupana Dham Plastchem Private Limited are the partners of the defendant No.1 company.

Counsel for the defendants have also brought to the notice of this Court to the registration certificate of the Rupana Dham Plastchem Private Limited wherein it is found that the defendant No.2 and the defendant No.3 are the partners of the said firm.

From the said document, it is crystal clear that the defendant No.4 is not the partner of the plaintiff firm. The Counsel for the defendant No.4 has also brought to the notice of this Court to the reply sent to the police on receipt of the notice under Section 41A of the Code of Criminal Procedure wherein the defendant No.4 has duly informed the police that the defendant No.4 is no way connected with the defendant No.1 company.

Counsel for the defendant No.4 submits that as there is no relationship between the defendant No.4 and defendant No.1 company but only

to harass the defendant No.4, the plaintiff has made the defendant No.4 as party to the instant suit.

Per Contra, learned Counsel for the plaintiff submits that the defendant No.4 is a proper and necessary party for the adjudication of the instant suit. He submits that it is the specific case of the plaintiff that the defendant Nos. 2 to 4 have jointly and severally introduced themselves as the partners of the defendant No.1 and also responsible for the day to day working of the defendant No.1 firm.

Counsel for the plaintiff submits that the defendant No.1 was totally involved in the business of the defendant No.1 company and he had the full knowledge with regard to the transaction between the plaintiff and the defendant No.1 company and as such if at this stage, the defendant No.4 is deleted from the suit, the plaintiff will suffer irreparable loss and injury in future. He further submits that if the defendant No.4 name has been deleted, the plaintiff will not be in a position to execute the decree, if any decree is passed by this Court in future.

Counsel for the plaintiff further submitted that the defendants have not filed any deed of partnership whether it is registered or unregistered only the defendants have filed the GST certificate, which cannot be proved that the defendant No.4 is not involved in the business.

Counsel for the plaintiff submits that the plaintiff has made the defendant No.4 as necessary party and as such the application filed by the defendant No.4 may be dismissed.

Heard learned Counsel for the respective parties.

In paragraph 3 of the plaint, the plaintiff has made an averment that “The defendant Nos. 2 to 4 have jointly and severally introduced themselves as the partners of the defendant No. 1 and also responsible for the day to day working of the defendant No.1 firm.”

In paragraph 4 of the plaint it is mentioned that for the past several years, the defendants have been a customer of the plaintiff and making purchases from him, thus gaining his trust and confidence.

The plaintiff has prayed a decree for sum of Rs.6,51,28,139.99p. (Rupees Six Crore Fifty one lacs Twenty Eight thousand one hundred thirty nine and paise ninety nine) from the defendants as pleaded in paragraph 29.

Paragraph 29 of the plaint reads as follows:-

“29. The defendants are under an obligation to make payment of the said sum of Rs.6,51,28,139.99p. (Rupees Six Crore Fifty one lacs Twenty Eight thousand one hundred thirty nine and paise ninety nine) only, at the registered office of the plaintiff within the jurisdiction as aforesaid. The defendants have failed and neglected to make such payments.”

The plaintiff has prayed for a decree of Rs.6,51,28,139.99 p. as a whole amount and has not segregated whether the defendant no.4 is liable to pay any separate amount. In the written statement filed by the defendant nos.1 to 3 in paragraph (j), the defendant nos.2 and 3 have stated as follows :-

“j. Not only is the case of the plaintiff false but the same is false to its knowledge. Moreover, the plaintiffs having made false averments on oath and having manufactured documents are guilty of having committed offenses under the Code of Criminal Procedure, 1973 and the Indian Penal Code, 1860 and/or The Bharatiya Nyaya Sanhita 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023. The plaintiff is liable to be prosecuted for the offenses of perjury, cheating and fraud and the other allied offenses committed by it on the defendants. The falsity and/or deliberate acts of vendetta on the part of the petitioners is manifest from the fact that, the plaintiff have sought to implead the defendant no.4 as a party in the suit without any just cause inasmuch as, the defendant no. 4 is neither a partner in the defendant no.1 nor is he in any way related to the defendant no.1 firm. Such fact is to the knowledge of the plaintiff. The act of the plaintiff seeking to implead the defendant no.4 would show beyond a reasonable doubt, that, the present suit is only an attempt to harass and cause severe financial prejudice to the answering defendants.”

This Court has also considered the registration certificate relied by the defendant no.4 with regard to the defendant no.1 company wherein it is crystal clear that only the defendant nos.2 and 3 are the partners along with Rupana Dham Plastchem Private Limited. This Court has also considered the

registration certificate of Rupana Dham Plastchem Private Limited wherein it is also clear that the defendant nos.2 and 3 are the partners of the said firm and not the defendant no.4. The plaintiff has not disclosed any document to show that there is no jural relationship with the plaintiff and the defendant no.4 or the defendant no.4 is liable to pay any amount to the plaintiff or any transaction made between the plaintiff and the defendant no.4 and only a bold statement has been made in the plaint that the defendant nos.2 to 4 are jointly and severally are liable to make payment but the documents disclosed by the defendant no.4 and the statement made by the defendant nos.2 and 3 in their statement, it is crystal clear that the defendant no.4 is not connected with the defendant no.1.

Considering the above, this Court finds that the defendant no.4 is not a necessary party to the instant suit and as such, the name of the defendant no.4 is deleted.

GA-COM/4/2024 is disposed of.

(KRISHNA RAO, J.)