

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.34431 OF 2024 (GM - CPC)



BETWEEN:

- 1 . MAXLINEAR TECHNOLOGIES PVT. LTD.,
REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE
MR.SRIDHAR RAMAMURTHY (DIRECTOR),
HAVING ITS OFFICE AT:
7TH FLOOR, BLOCK G AND H (TULIP)
PARCEL 5, EMBASSY TECH VILLAGE,
DEVERACHIKKANAHALLI,
OUTER RING ROAD,
BENGALURU – 560 103.
- 2 . MR. SRIDHAR RAMAMURTHY,
AGED 58 YEARS,
DIRECTOR OF FRENUSTECH PVT. LTD.,
NO.G7, MANACAMPBELL,
GREEN GLEN LAYOUT,
BELLANDUR
BENGALURU – 560 103.

AND ALSO DIRECTOR OF
MAXLINEAR TECHNOLOGIES PVT. LTD.,
7TH FLOOR, BLOCK G AND H (TULIP)
PARCEL 5, EMBASSY TECH VILLAGE,

DEVERACHIKKANAHALLI,
OUTER RING ROAD,
BENGALURU – 560 103.

- 3 . PINKESH SHAH
AGED ABOUT 42 YEARS
DIRECTOR PHYSICAL DESIGN
MAXLINEAR TECHNOLOGIES PVT. LTD.,
7TH FLOOR, BLOCK G AND H (TULIP)
PARCEL 5, EMBASSY TECH VILLAGE
DEVERACHIKKANAHALLI, OUTER RING ROAD
BENGALURU – 560 103.
- 4 . PRASHANT R. MURTHY
AGED ABOUT 46 YEARS
(EX DIRECTOR OF FRENUS TECH PRIVATE LIMITED)
7TH FLOOR, BLOCK G AND H (TULIP)
PARCEL 5, EMBASSY TECH VILLAGE
DEVERACHIKKANAHALLI
OUTER RING ROAD
BENGALURU – 560 103.
- 5 . RAMESH BHAT
AGED ABOUT 46 YEARS
7TH FLOOR, BLOCK G AND H (TULIP)
PARCEL 5, EMBASSY TECH VILLAGE
DEVERACHIKKANAHALLI
OUTER RING ROAD
BENGALURU – 560 103.
- 6 . SOUMYA HEGDE
AGED ABOUT 39 YEARS
EX DIRECTOR OF
M/S. FRENUSTECH PVT. LTD.,
NO.G7, MANACAMPBELL
GREEN GLEN LAYOUT
BELLANDUR, BENGALURU – 560 103.

- 7 . AKSHARA MURALI
AGED ABOUT 27 YEARS
NOOJILA HOUSE
POST ARIYAPPADY SHENI
KASARGOD – 671 551
KERALA, INDIA.
- 8 . BALAJI REDDY
AGED ABOUT 27 YEARS
HOUSE NO. 3-128
MANUKONDAVARIPALEM VILLAGE
CHILAKALURIPET, GUNTUR - 522 616
ANDRA PRADESH, INDIA.
- 9 . DHANRAJ BASUR GADIAPPA
AGED ABOUT 31 YEARS
PURADAKERI, HALLUR
HAVERI - 581 119
KARNATAKA, INDIA.
- 10 . ELAYARAJU VELAYUDHAN
AGED ABOUT 34 YEARS
NO. S/10, RAILWAY COLONY
SRIRANGAPATNA, MANDYA
KARNATAKA, INDIA – 571 438.
- 11 . KAMALA GOWDRA RAJASHEKARAPPA
AGED ABOUT 33 YEARS
H.NO.1, LINGADAHALLY POST
AMRUTAPURA POST
HOLALKERE, CHITRADURGA - 577 557
KARNATAKA, INDIA.
- 12 . MANJUNATH CHITTAPUR
AGED ABOUT 39 YEARS
728, 4TH D CROSS,
7TH MAIN, 1ST BLOCK, HRBR LAYOUT
KALYAN NAGAR, BANASWADI

BENGALURU – 560 043
KARNATAKA, INDIA.

- 13 . RAVIKIRAN
AGED ABOUT 35 YEARS
NO.3/5, P AND T QUARTERS
KAVALBHYRASANDRA
BENGALURU – 560 032
KARNATAKA, INDIA.
- 14 . SAILI SUBHASH DESAI
AGED ABOUT 28 YEARS
B-1/2, CENTURY RAYON COLONY
MURBAD ROAD, SHAHAD
THANE – 421 103
MAHARASHTRA INDIA.
- 15 . SANKEERTH KUMAR VADAMADULU
AGED ABOUT 40 YEARS
23-8-18/2,
GANGA BATHULA VARI STREET
VISHAKAPATNAM URBAN – 530 001
ANDHRA PRADESH, INDIA.
- 16 . SATHYASHEELKUMAR SINGH
AGED ABOUT 40 YEARS
477/74/48, 2ND FLOOR
24TH 'B' MAIN, 3RD CROSS
HSR LAYOUT, SECTOR I
BENGALURU – 560 102
KARNATAKA, INDIA.
- 17 . MURALIDHAR
AGED ABOUT 35 YEARS
NO.53/1, 6TH MAIN
1ST CROSS,
ANANTHAPURA
BENGALURU – 560 064

KARNATAKA, INDIA.

... PETITIONERS

(BY SRI VIVEK HOLLA, ADVOCATE A/W.,
SMT. MAITREYI B.KANNUR, ADVOCATE)

AND:

- 1 . APTAMITRA CONSULTING PRIVATE LIMITED
REPRESENTED BY ITS FOUNDER AND CEO
SRI MANJESH J. C.,
AGED ABOUT 45 YEARS
OFFICE AT NO. 792, 5TH BLOCK
17TH CROSS, HMT LAYOUT
VIDYARANYAPURA
BENGALURU – 560 097.
- 2 . FRENUSTECH PVT. LTD.,
REPRESENTED BY
MR. SUNIL KUMAR H. V.,
NO. G7, MANACAMPBELL
GREEN GLEN LAYOUT
BELLANDUR, BENGALURU – 560 103.
- 3 . SUNIL KUMAR H. V.,
AGED ABOUT 41 YEARS
ERSTWHILE DIRECTOR OF
M/S. FRENUSTECH PVT. LTD.,
NO. G7, MANACAMPBELL
GREEN GLEN LAYOUT
BELLANDUR, BENGALURU – 560 103.

... RESPONDENTS

(BY SRI MANU P.KULKARNI, ADVOCATE FOR
SMT SUKANYA BASU MALLIK, ADVOCATE FOR R1;
NOTICE TO R2 AND R3 DISPENSED WITH VIDE ORDER
DATED 17/01/2025)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE LD COMMERCIAL COURT DTD 19 JULY 2024 IN THE COM.OS. NO.1495/2023 PENDING IN THE COURT OF LXXXIV ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-85) (COMMERCIAL COURT) ON I.A.NOS. 1 AND XVIII BENGALURU; DELETE THE PETITIONER ABOVE NAMED FROM THE ARRAY OF PARTIES IN THE COM. OS. NO.1495/2023 PENDING IN THE COURT OF LXXXIV ADDL. CITY CIVIL AND SESSION JUDGE (CCH-85) (COMMERCIAL COURT) BENGALURU.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/defendant Nos.3 to 5 and 10 to 24 are before this Court calling in question an order dated 19-07-2024 passed by the LXXXIV Additional City Civil and Sessions (CCH-85) (Commercial Court), Bengaluru on I.A.Nos.I to XVIII in Commercial O.S.No.1495 of 2023, rejecting the applications filed by the petitioners seeking their deletion from the array of defendants.

2. Facts, in brief, germane are as follows: -

2.1. The 1st petitioner/defendant No.3 is an Indian Company engaged in the business of engineering services providing systems on chip solutions used for broadband, mobile and wireline infrastructure, data centre and industrial and multi-market applications. Petitioner No.2 who is defendant Nos.4 and 5 is the Director of the 1st petitioner Company and 2nd respondent Company. Petitioner No.3/defendant No.10 is again Director of Physical Design of 1st petitioner Company; petitioners Nos.4 to 6/defendant Nos. 11 to 13 are the erstwhile Directors of respondent No.2 Company, petitioner Nos. 7 to 17/defendant Nos. 14 to 24 are the erstwhile employees of 2nd respondent Company. The 1st respondent is an Indian consulting Company specialized in developing integrated hardware and software solutions for the semiconductor industry. The 2nd respondent/defendant No.1 is a Private Limited Company engaged in the business of engineering consulting and product development and respondent No.3 is the erstwhile Director of respondent No.2 Company.

2.2. In the month of November, 2021 one Manjesh, founder and CEO of the 1st respondent Company approaches the 2nd respondent Company offering assistance to the Company for identification of potential M & A opportunities. It is the case of the petitioners that during discussions, the 2nd respondent shared the Company's profile with the 1st respondent, but no confidential data or information was shared at that stage. After several rounds of discussions and exchange of drafts, on 09-05-2022, the 1st respondent Company/plaintiff and the 2nd respondent Company/defendant No.1 enter into a Non-Disclosure Agreement (NDA) and a Managed Services Partner Agreement (MSPA) on 25-01-2022. The 3rd respondent/defendant No.2 being the Director and authorized signatory of the 2nd respondent Company signed and executed the said agreements on behalf of the Company. The MSPA was valid for a term of three months during which period if the 2nd respondent Company was contacted by any third parties who were introduced through the 1st respondent Company, the 2nd respondent was required to promptly inform the 1st respondent Company regarding the same and the 1st respondent Company was also entitled to success fees. The 2nd respondent Company

however states that their relationship with the 2nd respondent Company was non-exclusive in nature. Prior to these agreements, on 14-03-2022, the 2nd respondent Company also entered into an NDA with Aptamitra USA Consulting LLC who was the US subsidiary of the 1st respondent Company, which was valid for a term of 2 years.

2.3. Subsequently, several discussions ensue between the 2nd and 3rd respondent Companies regarding the employment of the employees of the 2nd respondent Company in USA, for which the 1st respondent Company with the help of its US subsidiary, would facilitate in obtaining H1B visas for the employees. The two companies also enter into an H1B Master Services Agreement for the same. Out of the 45 employee profiles which were shared, 11 employees - the petitioner Nos.7 to 17, were selected for the H1B visa process, all of which according to the 1st respondent Company cost it a huge amount of money. This, the respondent No.1 Company states, increased the valuation of the 2nd respondent Company. However, though the initial approvals for the 11 employees were obtained, the 2nd respondent company decided

not to proceed with the H1B visa engagement process and none of the employees were thus placed. Even the draft Master Services Agreement for the purported US based arrangements was never executed.

2.4. In July, 2022 the 2nd respondent Company/defendant No.1 comes in contact with the petitioner No.1 Company/defendant No.3 which the Petitioner No.1 states happened without the involvement of respondent No.1 Company and was unrelated to the transactions between the 1st and 2nd respondent Companies. In August, 2022 the term of the MSPA between the 1st and 2nd respondent Companies expired and by September, 2022 the H1B visa process culminated. The unilateral withdrawal from the H1B visa process, causes a rift between the 1st and 2nd respondent Companies, which the 1st respondent states, was caused by the inducement of the petitioner No.1 Company, upon increase in valuation of the 2nd respondent Company. Legal proceedings were thus taken up by the 1st respondent/plaintiff by causing a legal notice to petitioners 1 to 9 demanding ₹40/- crores on account of loss of business opportunities and credibility. Mediation proceedings

were initiated under Section 12A of the Commercial Courts Act, 2015 by filing a mediation application before the competent *fora* seeking ₹32/- crore damages on account of alleged breach of contract. During mediation proceedings, the 1st respondent had named only respondent No.2 and petitioners 1 to 9 as opposite parties. The mediation proceedings failed. On failure of mediation proceedings, a commercial suit comes to be instituted in Commercial O.S.No.1495 of 2023 now arraigning respondents 2 and 3 and petitioners 1 to 17 as defendants 1 to 24 in the suit. The Commercial Court directed issuance of summons to all the defendants, the petitioners and respondents 2 and 3.

2.5. The issue in the *lis* does not relate to the merit of the matter before the concerned Court. In the concerned Court an application is filed under Order 1 to Rule 10 r/w Section 151 of the CPC by defendant No.15 seeking his deletion from the array of parties. Likewise, other applications sprang under Order 1 Rule 10 of the CPC seeking their deletion from the array of parties. Those applications were filed by the remaining defendants named in this petition, barring defendants 1 and 2 and defendants 8 and 9. The

applications were preferred on the score that there is no cause of action against the petitioners; no agreement between the petitioners and the 1st respondent/plaintiff and that the 1st petitioner/defendant No.3 is a separate entity. Written statements were filed by the 1st petitioner and 2nd respondent. 3rd respondent and remaining petitioners adopted the written statement filed by 1st petitioner and 2nd respondent. The concerned Court, after hearing the parties on the applications under Order 1 Rule 10 of the CPC, rejected the applications seeking deletion of defendants from the array of parties, in terms of the impugned order. Aggrieved by the said order, the petitioners are before this Court in the subject petition.

3. Heard Sri. Vivek Holla along with Smt. Maitreyi B. Kannur, learned counsel appearing for the petitioners and Sri. Manu P. Kulkarni along with Smt. Sukanya Basu Mallik, learned counsel appearing for the respondent No.1.

4. The learned counsel appearing for the petitioners would contend that the Commercial Court has failed to appreciate that the

real controversy in the case before it, is between the 1st respondent/plaintiff and defendant Nos. 1 and 2. No relief is claimed against these petitioners in the suit and no cause of action is made out against these petitioners. The suit is filed for the alleged breach of terms and conditions of two agreements dated 9-05-2022 executed only between the plaintiff and defendant No.1 to which the present petitioners are not parties or signatories. There is no privity of contract except between the plaintiff and defendant No.1. The allegations of breach of terms and conditions of the MSPA and NDA, the two agreements, were only made against the 2nd respondent/1st defendant. The learned counsel would submit that mere discharge of duties by the Directors of the Company would not make such Director necessary or proper parties to the suit against the Company. Petitioner Nos. 7 to 17 are erstwhile employees of the 2nd respondent. They are only beneficiaries of the H1B visa process and they had no direct dealings with the plaintiff. The learned counsel submits that the object of Order 1 Rule 10 of the CPC is investing ample power upon the Court to strike out the name of any party who has been improperly joined. He would seek

the petition be allowed and the petitioners be deleted from the array of defendants.

5. *Per contra*, the learned counsel appearing for the plaintiff/1st respondent would contend that the petition is preferred by misrepresenting the facts. Respondent Nos. 1 and 2 entered into an exclusivity agreement, whereby respondent No.1 was appointed as the MSP for M & A pursuant to an agreement between the plaintiff/ respondent No.1 and respondent No.2. There is a clear admission of breach of exclusivity as obtaining in the terms of the contract. Therefore, the 1st respondent/Company is only claiming its legitimate fee as agreed upon in the agreements. He would contend that the order of the Commercial Court is challenged belatedly after about 3 months, only to protract the proceedings before the concerned Court. He would submit that there is clear cause of action against petitioner Nos. 2 to 6 as they are liable for inducing the respondent No.2 to breach the MSPA and NDA. The petitioner Nos.7 to 17 had the knowledge of the arrangements as evidenced from multiple communications. He would contend that the plaintiff being the *dominus litus* has a right to choose the person against

whom he wishes to litigate. The petitioners are liable for tortious interference or tort of inducement of breach of contract. The petitioners are also liable for committing the tort of civil conspiracy. On this score he would submit that the petition be dismissed and the order of the concerned Court be affirmed.

6. I have given my anxious consideration to the submissions made by the respective learned counsels for all the parties and have perused the material available on record.

7. The afore-narrated facts are a matter of record. They would not require any reiteration. In furtherance whereof, the issue that falls for consideration is whether applications filed by these petitioners under Order 1 Rule 10 of the CPC seeking their deletion require to be allowed or otherwise. The learned counsel appearing for the 1st respondent would accept the fact that petitioners 7 to 17/defendants 14 to 24 have no role to play and, therefore, they could be deleted from the array of defendants. Thus, what remains to be considered is whether petitioners 1 to 6 are proper and necessary parties to the *lis*. Therefore, the

examination of the impugned order is now restricted only to petitioners 1 to 6.

8. Before embarking upon consideration of the issue on its merits, I deem it appropriate to notice the statute and the interpretation of the said statute by various Courts. Order 1 Rule 10 of the CPC reads as follows:

"10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—

Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

(Emphasis supplied)

Sub-rule (2) of Order 1 Rule 10 provides the power to the Court to either add parties as plaintiffs or defendants whose presence, the Court deems is necessary for effective adjudication of the suit or delete such parties if they were improperly joined.

INTERPRETATION OF ORDER 1 RULE 10 OF THE CPC:

8.1. The Apex Court in its recent judgment in the case of

J.N. REAL ESTATE v. SHAILENDRA PRADHAN¹ holds as follows:

“....

22. This Court in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, (2010) 7 SCC 417, explained the scope of Order I Rule 10(2) of the CPC. In the unique facts which existed therein, there was a likelihood that the appellant would secure a right/interest in the suit property if the suit for specific performance instituted by the

¹ 2025 SCC OnLine SC 1015

respondent against the Airport Authority of India was dismissed. It was held, that in such a factual circumstance and such being the right asserted by the appellant, it cannot be made a party to the suit for specific performance. **While holding so, it was observed that although the general rule is that the plaintiff, being *dominus litis*, may choose the persons against whom he wishes to litigate and seek relief, yet this rule of impleadment would be subject to the provisions of Order I Rule 10(2) wherein courts are vested with the discretion to strike out or add parties to a suit depending on whether their impleadment is deemed necessary or proper. It was held that, even in suits for specific performance, a court may, at any stage of the proceedings, implead a person who is found to be a necessary party or proper party.**

23. In *Mumbai International Airport* (supra), this Court explained the import of the expressions "necessary party" and "proper party" as thus:

"14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party : (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be

made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

(Emphasis supplied)

24. It is limpid in the aforesaid observation that if a party is found to either a necessary or proper party, the court would have the jurisdiction to implead him, even against the wishes of the plaintiff concerned. In *Mumbai International Airport* (supra) another pertinent question that arose was whether there existed any conflict between the three-judge bench decision of this Court in *Kasturi v. Iyyamperumal*, (2005) 6 SCC 733 and the decision of a two-judge bench in *Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*, (2007) 10 SCC 82.

25. In *Kasturi* (supra), the respondent nos. 1 and 4 to 11 respectively therein, based their claim to be added as party defendants on an independent title and possession of the contracted property. **In such a backdrop, while rejecting the applications for impleadment, this Court had expounded the scope of Order I Rule 10(2) CPC and laid down certain tests for determining whether a person is a 'necessary party' for the purpose of impleadment in a suit for specific performance as follows:**

- (i) **First**, that a bare reading of Order I Rule 10(2) clearly indicates that the necessary parties in a suit for specific performance of a contract for sale or an agreement to sell, are the parties to the contract or, if they are dead, their legal representatives, as also persons who had purchased the contracted property from the vendor. A subsequent purchaser would be a necessary party since his rights would be affected irrespective of whether he had purchased the contracted property, with or without notice of the contract. However, it was clarified that a person

whose claim is adverse to the claim of a vendor, is not a 'necessary party'. Therefore, two tests were laid down by this Court, which must be satisfied for determining the question as to who is a necessary party – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. The relevant observations read as under:

"7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."

(Emphasis supplied)

- (ii) **Secondly**, as regards the meaning of "proper party", it was observed that in case of a suit for specific performance, the guiding principle for deciding who is a proper party is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the agreement to sell. Such a question has to be decided while keeping in mind the scope of the suit for specific performance. If the addition of that party enlarges the scope of such suit so as to convert it into a suit for title, then the presence of such a party cannot be said to be necessary for the effective adjudication of

the controversies involved in the suit. The relevant observations read as under:

"11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker v. Small* [(1834) 40 ER 848 : 3 My & Cr 63] made the following observations : (ER pp. 850-51)

'It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it.'

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13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose

absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person."

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15. [...] In the case of Vijay Pratap v. Sambhu Saran Sinha [(1996) 10 SCC 53] this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. [...]"

(Emphasis supplied)

- (iii) ***Thirdly, an intervenor seeking to be impleaded must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the agreement to sell. It was held that a person is considered to be legally interested in the answers to the controversy, only if he can satisfy the court that it may lead to a result that would legally affect him. The relevant observations read as under:***

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"17. [...] Apart from that, the intervenor must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In Amon v. Raphael Tuck and Sons Ltd. [[1956] 1 All ER 273 : [1956] 1 Q.B. 357 : [1956] 2 WLR 372] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally."

(Emphasis supplied)

26. However, this Court, in its subsequent decision in *Sumtibai* (supra), was faced with a factual scenario wherein the sons of the original defendant were also *prima facie* found to be co-owners of the contracted property. The sons were already impleaded in their capacity of being legal representatives to the deceased defendant who had entered into an agreement to sell in favour of the plaintiff therein. In this background, it was observed that it cannot be laid down as an absolute proposition that in a suit for specific performance, a third party can never be impleaded. It was opined that the decision of this court in *Kasturi* (supra) must be seen in the context in which it was delivered. Furthermore, some circumstantial flexibility is necessary to be taken into account in each case, since an additional or different fact may materially change the conclusion. Therefore, the sons of the original defendant were allowed to file an additional written statement and take the defence of co-ownership which was available to them.

27. While distinguishing *Kasturi* (supra), it was held in *Sumtibai* (supra) that if a third party can show a fair semblance of title or interest, he can file an application for impleadment in the suit for specific performance. The relevant observations read thus:

"13. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584-85, paras 9-12)

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to

be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [[1951] A.C. 737 (HL)] (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D) [...]'

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14. In view of the aforesaid decisions we are of the opinion that Kasturi case [(2005) 6 SCC 733] is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced."

(Emphasis supplied)

28. This Court in *Mumbai International Airport* (supra) was also of the view that different situations require the application of different facets of Order I Rule 10(2) and consequently, held that there was no conflict between the decisions of this Court in *Kasturi* (supra) and *Sumtibai* (supra). It was reiterated that that Order I Rule 10(2) CPC did not pertain to the 'right' of a non-party to be impleaded as a party but deals with the 'judicial discretion' of the court to strike out or add parties at any stage of the proceeding. In exercising this judicial discretion, courts must act according to reason and fair play and not according to whims and caprice.

29. It was observed that the court may exercise discretion in impleading a person who is a 'proper party' upon an application by a non-party to the suit for specific performance. If the court is of the view that the impleadment of such a proper party will alter the nature of the suit or introduce a new cause of action, it may either refuse to implead such person or order for his impleadment on certain conditions. However, even otherwise, the court would not be precluded from

impleading a 'proper party' unconditionally in its discretion. The relevant observations rendered in *Mumbai International Airport* (supra) read thus:

"24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if D claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of P representing that he is the co-owner with half-share, and P files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that D has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper

party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."

(Emphasis supplied)"

(Emphasis supplied)

The Apex Court in the afore-quoted judgment while reiterating the law laid down in its earlier judgments in the cases of **MUMBAI INTERNATIONAL AIRPORT (P) LIMITED v. REGENCY CONVENTION CENTRE & HOTELS (P) LIMITED**² and **KASTURI v. IYYAMPERUMAL**³, holds that a necessary party is a person who ought to have been joined as a party to the suit in whose absence an effective decree cannot be passed by the Court. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he will not be a person in favour or against whom a decree is to be made. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

² (2010) 7 SCC 417

³ (2005) 6 SCC 733

8.2. The test for determining who is a necessary party and who is a necessary witness and the difference between the two, is considered by the Apex Court, in its earlier decision in the case of **RAMESH HIRACHAND KUNDANMAL v. MUNICIPAL CORPORATION OF GREATER BOMBAY**⁴ wherein it is held as follows:

" "

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. **The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.** It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* [(1956) 1 All

⁴ (1992) 2 SCC 524

ER 273 : (1956) 1 QB 357] , wherein after quoting the observations of Wynn-Parry, J. in *DollfusMieg et Compagnie S.A. v. Bank of England* [(1950) 2 All ER 605, 611] , that **their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established**, Devlin, J. has stated:

"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights'."

(Emphasis supplied)

8.3. The Apex Court, again in its later judgment, in **AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA v. DELHI INTERNATIONAL AIRPORT LIMITED**⁵ while summarizing the principles of exercise of jurisdiction under Order 1 Rule 10 or 10(2) of the CPC, holds that a party would be a necessary party only when such party would be bound by the result of the action and has a direct or a legal interest in the proceeding. The Apex Court observes as follows:

"...."

39. Order 1 Rule 10 CPC grants the court the power to strike out or add parties. The rule provides that the court may either with or without the application of the party, add the name of the party who ought to have been joined or whose presence before the court may be necessary for the court to effectively adjudicate upon the

⁵ (2024) 15 SCC 345

questions involved in the suit. [Order 1 Rule 10(2): "**10. (2) Court may strike out or add parties.**—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."] **This Court has sufficiently dealt with proper and necessary parties referable to Order 1 Rule 10CPC. A necessary party is defined as someone who is indispensable to the suit and without whom the suit cannot effectively proceed. A proper party, on the other hand, is a party who has an interest in the adjudication of the suit though they may not be a person in whose favour or against whom a decree ought to be made.** [See *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1; *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, (2013) 5 SCC 397 : (2013) 3 SCC (Civ) 1] **This Court has further held that a party would not become a necessary party merely because she has an interest in the correct solution of the question involved. She would be a necessary party only when she would be bound by the result of the action and has a direct or a legal interest in the proceeding.** [See *Ramesh HirachandKundanmal v. Municipal Corpn., Greater Bombay*, (1992) 2 SCC 524, para 14; Also see *Kasturi v. Iyyamperumal*, (2005) 6 SCC 733] In view of the judgments of this Court in *CCI* [*CCI v. SAIL*, (2010) 10 SCC 744] and *Dabholkar* [*Bar Council of Maharashtra v. M.V. Dabholkar*, (1975) 2 SCC 702] , **a statutory authority would have a legal interest in appeals against orders made by it in discharge of its regulatory duty."**

(Emphasis supplied)

8.4. The High Court of Bombay in **AAKASH EDUCATIONAL SERVICES LIMITED v. LATA BHAGWANJI SHAH**⁶ while considering a case where the defendant seeks deletion from the array of parties on the score that there is no cause of action projected against the said defendant, holds as follows:

"....

19. In light of the aforesaid submissions, the core question that arises for consideration is, whether the impleadment of Defendant Nos. 2 and 3 as party-Defendants is justifiable. A useful reference, in this context, can be made to the relevant provisions contained in the Code.

....

24. A conjoint reading of the aforesaid provisions would indicate that, though the plaintiff is *dominus litis* and may implead the parties as defendants to the suit, against whom the plaintiff perceives to have cause of action, the plaintiff does not have an unfettered choice. The primary question that comes to the fore is, whether a party already impleaded or sought to be added, is a necessary or proper party, to the suit. A person who has no semblance of right or interest in the subject matter of the suit, nor the decree passed in the suit has the effect of affecting his rights or liabilities, can be impleaded as a party defendant to the suit. The general rule of *dominus litis* is thus subject to the provisions of Order 1 Rule 10(2) of the Code, which provides for striking out or addition of the parties.

25. It is well recognized that, the deletion or addition of the parties to the suit is not a matter of initial jurisdiction, but that of judicial discretion. Such discretion is required to be exercised keeping in view all

⁶ 2025 SCC OnLine Bom 4194

the circumstances. Under the provisions of sub-Rule 2 of Rule 10 of Order 1, the Court is empowered, at any stage of the suit, to add or delete a party. From the phraseology of sub-Rule (2) of Rule 10 of Order 1, it becomes evident that, the person who can be added as a party to the suit ought to be either (a) a person who ought to have been joined as Plaintiff or defendant, but not impleaded or (b) any person whose presence before the Court may be necessary in order to effectively and completely adjudicate upon, and settle the questions involved in the suit.

26. In the case of *'Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited'* [(2010) 7 SCC 417] the Supreme Court, expounded the distinction between a necessary party and a proper party in the following term:

"15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

27. The Supreme Court also expounded the nature of the jurisdiction exercised by the Court in the matter of addition or deletion of the parties under Order 1 Rule 10(2) as under:

"22. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

(emphasis supplied)

28. Thus, the essential test to add a person as a party defendant to the suit, is whether in the absence of such person no effective decree can be passed in the suit; meaning thereby a necessary party, or though no relief is claimed against a person, the presence of such person, would assist the Court in completely and effectually adjudicating the suit; meaning thereby a proper party. The concept of joinder of a party is inextricably interlinked with the joinder of causes of action. A party can be added to a proceeding, if there is any cause of action against such party as well.

29. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of *'Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera*² wherein the Supreme Court enunciated that the simple principle is that, **a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined. The observations in para Nos. 11 to 14 read as under:**

.....

30. In view of the aforesaid exposition of law, whenever defendant seeks deletion of his name from the array of the defendants, the Court is required to pose unto itself the question as to whether the said defendant can be said to be either a necessary or proper party to the suit. The said determination would, undoubtedly, hinge upon the averments in the plaint and the documents annexed with it. If there is slightest material to show the existence of a cause of action against such person, he cannot be deleted from the array of the defendants for the only reason, that, the plaintiff does not claim whole of relief against such person. However, the necessary nexus between the defendants and the lis ought to be, *prima facie*, evident.

31. The nature of the Suit also assumes material significance. In the case at hand the Plaintiffs seek to primarily recover the unpaid licence fee and damages for alleged unlawful occupation of the Suit premises and also for having allegedly caused damage thereto. The Suits are in relation to the recovery of licence fee. The Suits broadly fall in the category of Suits for recovery of possession and licence fee of the demised premises."

(Emphasis supplied)

The High Court of Bombay holds that whenever the defendant seeks deletion of his name from the array of defendants, the Court is required to pose on to itself the question as to whether the said defendant can be said to be either a necessary or a proper party to the suit. The Court further holds that, the decision would necessarily hinge on the averments in the plaint and the documents

annexed to it. Further, the Court holds that, though the plaintiff is *dominus litis* to the suit and may implead the parties as defendants to the suit, against whom the plaintiff perceives to have cause of action, the plaintiff does not have an unfettered choice.

LIABILITY OF DIRECTORS IN SUITS AGAINST A COMPANY:

9. Since petitioner Nos.2 to 6 are all Directors of either petitioner No.1 or respondent No.2 company, it becomes apposite to notice the law on liability of the Directors of a Company, for their impleadment, in suits against the Company.

9.1. In **MAHENDER KUMAR AGGARWAL v. ANSAL BUILDWELL LTD.**⁷, the High Court of Delhi, holds that in a suit for damages where the Company has been made a party, the Director and General Manager of a Company are not necessary parties as no relief was claimed against them and their presence was not necessary for effective disposal of the suit. The High Court observes as follows:

"2. Record shows that the present suit is a suit for recovery of damages for a malicious prosecution. It had been filed by

⁷ **2011 SCC OnLine Del 4474**

Mr. Mahender Aggarwal arraying M/s Ansal Buildwell Ltd. as defendant No. 1. **There is no dispute to the factum that M/s Buildwell Ltd. is a duly incorporated company. Defendants No. 2 & 3 Gopal Ansal and Anurag Verma were the Managing Director and General Manager of the said company; averments made in the present suit have been perused. This is a suit for damages on account of malicious prosecution and defamation; contention is that defendant No. 1** had filed a false and malicious complaint against the plaintiff pursuant to which an FIR had been registered which FIR had been quashed by the order of Justice S.N. Dhingra on 28.09.2007. While quashing the said FIR, it had been noted that the defendants had committed a misuse of the judicial process; it was in these circumstances that the present suit for malicious prosecution came to be filed by the plaintiff against defendant No. 1; defendants No. 2 & 3 have also been arrayed in the memo of parties. In the body of the plaint in para 10 it had been stated that it is clear that conduct of the defendants was to hatch a criminal conspiracy against the plaintiff; the defendants as per para 10 makes a reference to the defendants. Relevant would it be to extract the FIR and the averments made therein. It is not in dispute that pursuant to the present complaint made under Section 156(3) of the Code of the Criminal Procedure; the criminal machinery had been set in motion and the aforementioned FIR bearing No. 612/2010 had been registered on the asking of the Magistrate. The complaint had been filed by defendant No. 1 under Section 384/506/120-B IPC; this FIR as noted supra has since been quashed.

3. The body of a plaint necessarily deciphers what the plaintiff has to state; the impugned order has correctly noted this and recorded that there is no specific averments against defendants No. 2 & 3 and as such the joinder of defendants No. 2 & 3 is misplaced. Defendant No. 1 is admittedly an individual; he being a company and having an identity of its own. The plaint did not disclose any cause of action against defendants No. 2 & 3; the twin test for deciding an application under Order 1 Rule 10 of the Code had also been adverted to; a necessary party would be a party against whom a relief is sought or in the absence of that party no effective

decree can be passed. Applying the said test, the Court had correctly noted that defendants No. 2 & 3 are liable to be deleted as no relief against them has been claimed and their presence is also not necessary for effective disposal of the suit; the impugned order in no manner suffers from any infirmity."

(Emphasis supplied)

9.2. Again, in **ACE INNOVATORS (P) LTD. v. HEWLETT PACKARD INDIA SALES (P) LTD.**⁸, the High Court of Delhi holds that under Section 230 of the Indian Contract Act, 1872, the agent of the defendant Company who has not entered into a contract with the plaintiff Company cannot be sued for damages for breach of contract. Further while deciding an application under Order 1 Rule 10 of the CPC, the averments in the plaint have to be read by way of a demurrer. The High Court observes as follows:

"5. It is well settled that for deciding the application under Order VII Rule 11 CPC r/w Order I Rule 10CPC the averments made in the plaint have to be read by way of demurrer. The only averments in the entire plaint against the Defendant No. 3 is that the Defendant No. 3 is the authorized distributor and supplied the products of HP company, that the Defendant No. 3 delivered to the Plaintiff 127 HP laptops instead of 215 HP laptops, did not deliver the remaining 88 laptops and finally after great persuasion 127 HP laptops were picked up by the representative of the Defendant No. 3 on 23rd November, 2011. Admittedly there is no privity of contract

⁸**2013 SCC OnLine Del 4019**

between the Plaintiff and the Defendant No. 3. Further admittedly the Defendant No. 3 is an agent of Defendant no. 1 Company, its authorized distributor/supplier. **It is in the light of these averments it is to be seen whether the Defendant No. 3 is a necessary party or not. Section 230 of the Indian Contract Act (in short 'Contract Act') provides as under:—**

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. - In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary. - Such a contract shall be presumed to exist in the following cases:—

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) Where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued."

6. It is thus evident that in terms of Section 230 of the Contract Act, in the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by him. Further there is no presumption to the contrary as the name of the principal is known to the Plaintiff. In the present case, the agent, that is Defendant No. 3 has not entered into the contract with the Plaintiff and thus cannot be sued for the damages for breach of contract by Defendant No. 1. In *Prem Nath Motors Limited* (supra) the Hon'ble Supreme Court held:

"7. Section 230 of the Contract Act categorically makes it clear that an agent is not liable for the acts of a disclosed principal subject to a contract of the contrary. No such contract to the contrary has been pleaded. An identical issue was considered by this Court in the case of *Marine Contained Services South (P) Ltd. v. Go Go Garments*, where a similar order passed under the Consumer Protection Act was set aside by this Court. It was held that by virtue of

Section 230 the agent could not be sued when the principal had been disclosed. A similar view has been expressed by a three judge Bench of this Court in Civil Appeal 6653/2005 arising out of S.L.P. (C) No. 19562/2004." This court in *Tristar Consultants* (supra) held:

"26. A perusal of Section 230 of the Indian Contract Act, 1872 shows that unless an agent personally binds himself, an agent is not personally liable for contracts entered into by him on behalf of his principal.

27. I may note an exception. The exception is that where an agent has contracted on behalf of a principal who is unnamed and undisclosed, on properly constituted pleadings and on so establishing, such an agent who acts on behalf of a undisclosed principal may be personally liable for a contract entered into by him.

28. To interpret the law as is sought to be projected by the petitioner would mean negation of the concept of a company being limited by its liability as per the memorandum and articles of association of the company. Other than where directors have made themselves personally liable i.e. by way of guarantee, indemnity etc. liabilities of directors of a company, under common law, are confined to cases of malfeasance and misfeasance i.e. where they have been guilty of tort towards those to whom they owe a duty of care i.e. discharge fiduciary obligations. Additionally, qua third parties, where directors have committed tort. To the third party, they may be personally liable.

29. For example by making false representations about a company, a director induces a third party to advance a loan to the company. On proof of fraudulent misrepresentation, a director may be personally liable to the third party.

30. But this liability would not flow from a contract but would flow in an action at tort. The tort being of misrepresentation of inducement and causing injury to the third party having induced the third party to part with money."

7. In the facts of the case, though the plaint is not liable to be rejected for mis-joinder of Defendant No. 3 however, the

Defendant No. 3 is liable to be deleted from the array of parties as he is neither a proper party nor a necessary party.

Application is disposed of deleting the Defendant No. 3 from the array of parties."

(Emphasis supplied)

9.3. The Division Bench of the High Court of Gujarat in **PASCHIM GUJARAT VIJ CO. LTD. v. MANIBHADRA ISPAT LTD.**⁹, while upholding the order of the trial Court, striking out the Directors from the array of parties on the ground that, Directors cannot be held liable for acts of the Company and due to lack of cause of action in the plaint, discusses the Doctrine of Lifting of Corporate Veil and observes as follows:

"22. Thus, the dictum of law as laid by the Supreme Court in the aforesaid decision is that the court can strike out any party who is improperly joined. The court may also add anyone as a plaintiff or as a defendant if it finds that such person is a necessary party or a proper party. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court should act according to the reasons and fair play and not according to the whims and caprice.

.....

24. Indisputably, a company incorporated under the Companies Act, whether as a private limited company or a public limited company, is a juristic entity. The decisions of the company are taken by the Board of

⁹ 2019 SCC OnLine Guj 6933

Directors of a company. The company acts through its Board of Directors, and an individual Director cannot don the mantle of the company by acting on its behalf, unless he is so authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. It is equally well settled that a Director of a company though he owes a fiduciary duty to the company, he owes no contractual duty qua the third parties. There are, however, two exceptions to this rule. The first is, where the Director or Directors make themselves personally liable, i.e. by execution of personal guarantees, indemnities, etc. The second is, where a Director induces a third party to act (to his detriment by advancing a loan or money to the company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money.

25. This is the settled position ever since 1897 when the House of Lords decided the case of *Salomon v. Salomon & Co. Ltd.*, [1897] A.C. 22, and Lord Macnaghten, observed as under:

"...the company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act."

26. However, with the passage of time inroads have been made into the aforesaid legal principle that the company is a legal entity distinct from its shareholders and directors and certain exceptions have been carved out. One such inroad is commonly described as the **lifting or piercing of the corporate veil**. This has been succinctly put by the Supreme Court in *Tata Engineering and*

Locomotive Co. Ltd. v. State of Bihar, (1964) 6 SCR 885, as follows:

"..The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. This position has been well established ever since the decision in the case of *Salomon v. Salomon and Co.* was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirement the theory about the personality of the corporation may be confined more and more."

.....

28. The question therefore in the instant case is - Can the corporate veil be lifted in the present case to reveal the identity of the person or persons behind it? The plaintiff in its plaint has not made out any such case to justify the piercing of the corporate veil. The plaint is absolutely silent as regards the personal liability of the

Directors to pay the dues of the plaintiff. There is not even a whisper in the plaint in this regard.

29. Ultimately, the moot question which needs to be answered is, whether the respondents nos. 2, 3 and 4 herein as the Directors could be said to have made themselves personally liable for the dues of the company.

30. The Delhi High Court, in the case of *Tristar Consultants v. Customer Services India Pvt. Ltd.*, reported in (2007) 139 DLT 688, has explained the position of law. The observations made in paragraphs 28, 29 and 30 of the said judgment read thus:

"28. To interpret the law as is sought to be projected by the petitioner would mean negation of the concept of a company being limited by its liability as per the memorandum and articles of association of the company. Other than where directors have made themselves personally liable i.e. by way of guarantee, indemnity, etc. liabilities of directors of a company, under common law, are confined to cases of malfeasance and misfeasance i.e. where they have been guilty of tort towards those to whom they owe a duty of care ie. discharge fiduciary obligations. Additionally, qua third parties, where directors have committed tort. To the third party, they may be personally liable.

29. For example by making false representations about a company, a director induces a third party to advance a loan to the company. On proof of fraudulent misrepresentation, a director may be personally liable to the third party.

30. But this liability would not flow from a contract but would flow in an action at tort. The tort being of misrepresentation of inducement and causing injury to the third party having induced the third party to part with money."

.....

32. It is not in dispute that in the case at hand, there is no assertion in the plaint that the respondents nos. 2, 3 and 4 as Directors of the company had extended any contract of

guarantee or had even undertaken to make payment to the plaintiff company of the dues towards the electricity charges.

33. It is also well settled that fraud, if alleged, must be pleaded meticulously and in detail and proved to the hilt. A mere assertion that fraud has been committed is neither here nor there. Precisely and in what manner fraud has been committed is required to be delineated by the party alleging the same if the plea of fraud is to be made the basis of a decree against the other party. Bald assertions and vague allegations will not be countenanced by the courts. Rule 4 of Order VI specifically lays down that the particulars of the fraud alleged (with dates and items, if necessary) shall be stated in the plaint.

.....

35. A Division Bench of the Allahabad High Court, in the case of *Meekin Transmission Limited* (supra), has dealt with the issue exhaustively. The decision of the Allahabad High Court is under the following heads:

"- Concept of Companies - History of Incorporation of Companies and relevant statutes:

- Status of Company, Directors and Shareholders - individually and inter se in Common Law as well in the Act:

- Doctrine of Piercing of Veil (Lifting the Corporate Veil) : Exception to the Law of Separate Entity:

- Initial burden for application of the doctrine of "Piercing of Veil":

36. We may quote the relevant observations made in the aforesaid decision thus:

"Concept of Companies - History of Incorporation of Companies and relevant statutes:

.....

Status of Company, Directors and Shareholders - individually and inter se in Common Law as well in the Act

.....

23. The position of a Director vis a vis company has been equated with an Agent in as much as, the company cannot act in its own person but has to act only through Directors who, therefore, have the relationship of an Agent qua company. However, the Managing Director has been held to have a dual capacity inasmuch as being a Director he is an agent of the company but he is also an employee. In Shri Ram Pershad v. C.I.T., (1972) 2 SCC 696 : AIR 1973 SC 637, the Apex Court held:

"It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its principal. A Managing Director may have a dual capacity. He may both be a Director as well as employee....."

24. The work, performance and responsibility of Directors, Managing Directors and other Officers of the company is provided in the various provisions of the Act and it is not necessary for us to go in further details of those provisions for the purpose of present case.

25. From the above discussion the position as culled out is that the word "Company" imports an association of number of individuals formed for a common purpose. When such an association is incorporated, it becomes a body corporate, a legal entity, separate and distinct from such individuals. Such incorporation must owe its existence to a statutory authority. The corporation/Company, in law, is equal to a natural person and has a separate legal entity of its own. Once incorporated, the entity of the corporation is entirely separate from that of the share holders, It bears its own name; has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; the liability of the members or share holders is limited to the capital invested by them; the creditors of the Company cannot obtain satisfaction from the assets of the share holders/members of the company and similarly creditors of the members/share holders have no right to the assets of the Company. This position was recognised in Salomon v. Salomon and

Co., [1897] A.C. 22 and since then has always been well recognised as a principle of common law. The effect of registration of the company is provided under Section 34 of the Act.

.....

27. A Company being an artificial juridical person cannot act by its own. It acts through Directors. The executive authority of the Company is vested ordinarily in the Board of Directors which is responsible for the proper management of the Company. There are several duties and obligations of the Board of Directors and Directors of the Company which are enshrined in detail in various provisions of the Act. The Directors are paid remuneration for services they render but cannot claim remuneration as of right and, instead, if it is provided in the memorandum or Article of Association, they would be entitled for such remuneration as provided therein. The company is a separate entity qua Directors also inasmuch as, the Directors represent the company and may enter into a contract of employment with himself in his individual capacity and simultaneously acting for company.

.....

32. In brief, we can cull out the following:

(1) Company is a distinct and separate juristic personality having its own rights of right to property etc;

(2) The shareholders have no interest in any particular asset of the company or the property of the company except of participating in profits, if any, when the company decides to divide them or to claim his share when the company is wound down in accordance with the articles of the company;

(3) A company is distinct from its Board of Directors who cannot enforce a right in their individual capacity which belongs to the company (TELCO v. State of Bihar, AIR 1965 SC 40.

(4) The liability of the company simultaneously is also not the liability of shareholders. The shareholders cannot be made liable under a decree against a company has held in *Nihal Chand v. Kharak Singh Sunder Singh*, (1936) 2 Comp Cas 418 and *Harihar Prasad v. Bansi Missir*, (1932) 6 Comp Cas 32.

Doctrine of Piercing of Veil (Lifting the Corporate Veil) : Exception to the Law of Separate Entity:

.....

78. In the nutshell, the doctrine of lifting of veil or piercing the veil is now a well established principle which has been applied from time to time by the Courts in India also. There is no doubt about the proposition that whenever the circumstances so warrant, the corporate veil of the company can be lifted to look into the fact as to whose face is behind the corporate veil who is trying to play fraud or taking advantage of the corporate personality for immoral, illegal or other purpose which are against public policy. Such lifting of veil is also has to implemented whenever a statute so provided. However, it is not a matter of routine affair. It needs a detailed investigation into the facts and affairs of the company to find out as to whether the veil of the corporate personality needs to be lifted in a particular case. **After lifting the veil, in a case where it is so required, it is not always that the Directors would automatically be responsible but again it is a matter of investigation as to who is/are the person/s responsible and liable who had occasioned for application of said doctrine.**

Initial burden for application of the doctrine of "Piercing of Veil":

.....

39. Order 1 Rule 3 of the CPC requires that where right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against various persons whether jointly, severally or in the alternative and if separate suits were brought against such persons, common questions of law or fact would arise, such persons may be joined in one suit as defendants.

40. Sub rule 2 of Rule 10 of Order 1 permits a court, at any stage of the proceedings, either upon or without any

application of either party, to strike out a person improperly joined as a defendant.

41. In a suit for recovery of money, only such persons can be impleaded as defendants against whom averments are made which, on proof, would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said persons named as defendants.

42. The other facet of the aforesaid proposition of law is that there must be a cause of action disclosed against a person impleaded as a defendant.

43. The learned counsel for the petitioner did not dispute that in the plaint there is no assertion against the Directors of the company that they personally undertook or agreed to clear any liability of the defendant outstanding against the plaintiff. No guarantee or indemnification has been pleaded. But, the submission of the learned counsel for the petitioner is that every Director acts as the agent of a company and, therefore, as an agent, a Director would be personally liable if he has acted on behalf of the company.

44. The learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of *Ram Parshad v. Commissioner of Income Tax*, reported in (1972) 2 SCC 696 : (1973) 1 SCR 985. The following passage has been relied upon:

"Through an agent as such is not a servant, a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant. It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its capacity. Managing Director may have a dual capacity."

45. It is a settled law that a company is a juristic person. Therefore, a company has to act through a living human being. Collectively, the decisions on behalf of the company are taken by the Board of Directors of a company. An individual Director has no power to act on behalf of a company of which he is a Director, unless there is a specific resolution of the Board of Directors of the company giving specific power to him/her or, where the Articles of company confer such a power.

46. The Directors of companies have been described as agents, trustees or representatives of the company because of the fact vis-a-vis the company they act in a fiduciary capacity. They perform acts and duties for the benefit of the company. Thus, the Directors are the agents of the company to the extent they have been authorized to perform certain acts on behalf of the company. But the Directors of a company owe no fiduciary or contractual duties or any duty of care to third parties who deal with the company. This distinction has been ignored by the learned counsel for the petitioner.

47. The Directors of a company are referred to as the agents of the company in the context of their fiduciary duty to the company and, therefore, if they derive any personal benefit while purporting to act on behalf of the company, they will be liable to the company and its shareholders. But the Directors cannot be treated as acting as the agents of the company in the conventional sense of an agent, vis-a-vis third parties.

48. As conventionally understood, a person acts as an agent for a principal and represents the principal before the third parties. Such contracts which are concluded by the agent on behalf of his principal with third parties would bind the principal to the third party.

.....

50. A perusal of Section 230 of the Indian Contract Act, 1872, shows that unless an agent personally binds himself, an agent is not personally liable for contracts entered into by him

on behalf of his principal. We may note an exception. The exception is that where an agent has contracted on behalf of a principal who is unnamed and undisclosed, on properly constituted pleadings and on so establishing, such an agent who acts on behalf of an undisclosed principal may be personally liable for a contract entered into by him.

51. To interpret the law as is sought to be projected by the petitioner would mean negation of the concept of a company being limited by its liability as per the Memorandum and Articles of Association of the company. Other than where Directors have made themselves personally liable, i.e. by way of guarantee, indemnity etc., liabilities of Directors of a company under the common law are confined to cases of malfeasance and misfeasance, i.e. where they have been guilty of tort towards those to whom they owe a duty of care, i.e. discharge fiduciary obligations. Additionally, qua third parties, where Directors have committed tort. To the third party, they may be personally liable.

52. For example, by making false representations about a company, a Director induces a third party to advance a loan to the company. On proof of fraudulent misrepresentation, a Director may be personally liable to the third party. But this liability would not flow from a contract but would flow in an action at tort. The tort being of misrepresentation of inducement and causing injury to the third party having induced the third party to part with money. (see *Tristar Consultants v. Customer Services India Pvt. Ltd.*, reported in (2007) 139 DLT 688).

53. We are also not impressed by the submission of Ms. Bhaya as regards the issue no. 9 framed by the Commercial Court.

54. We are afraid, such an issue could not have been framed. We fail to understand on what basis the Commercial Court has framed the issue no. 9. The term 'issue' in a civil court mean, 'a disputed question relating to the rival

contentions in a suit'. An issue in a case is a 'material proposition' (means directly relevant and vital statement which affirms or denies) of fact or of law. The term 'material proposition' refers to the 'cause of action' of a case. The 'cause of action' is a bundle of essential facts when considered against the law applicable to such facts, gives the plaintiff a right to seek some relief against the defendant in the case. The issues are to be framed by the court from the following sources:

- (1) Allegations of parties or on their behalf on oath;
- (2) Allegations made in the pleadings/interrogatories;
- (3) The contents of documents produced by both the parties.

55. In the case on hand, as discussed in this judgment, it is not the case of the plaintiff that the Directors are also personally responsible for the payment of the dues of the Board. It is not even their case in the entire plaint in this regard. By merely saying something in the prayer clause with regard to the personal liability of the Directors the issue no. 9 could not have been framed.

.....

59. In view of the aforesaid discussion, we have reached to the conclusion that we should not interfere with the impugned order passed by the court below in exercise of our supervisory jurisdiction under Article 227 of the Constitution of India.

.....

62. If a particular defendant has no connection with the cause of action pleaded against the other defendants, he is certainly a person improperly joined entitling him to make an application to have his name struck out. One of the grounds on which such an application can be made is that the plaint discloses no cause of action against the defendant. An application may not be maintainable under Order 7 Rule 11(a) of the CPC for a variety of reasons. For instance, in the present case, it may not be maintainable as the Directors are not the only defendants. The suit against the defendant no. 1, i.e. the company, must proceed to trial. There is no application by the company under Order 7 Rule 11 of the CPC. In such circumstances, the law is that the proper course is to strike out

the names of the defendants against whom there is no cause of action. However, a plea that the plaint discloses no cause of action is essentially one on a demurrer. Such a plea ought to be accepted only when the court comes to a conclusion that even if the averments in the plaint are proved, the plaintiff would not be entitled to the reliefs claimed. The court must, therefore, presume that the facts stated in the plaint are correct. In view of the drastic consequences of upholding such a plea, it is axiomatic that it ought to be accepted only in clear cases. **Moreover, while considering an application for striking out the name of a defendant on the ground that the plaint discloses no cause of action against him, the court ought to act with great circumspection and even greater restraint.**

(Emphasis supplied)

9.4. Yet again, the High Court of Delhi in **SANUJ BHATLA v. MANU MAHESHWARI**, while observing that the Directors of a Company cannot be held personally liable in the absence of allegations of fraud or misrepresentation in the averments of the plaint, holds as follows:

"21. Learned counsel for the Defendant Nos. 2 and 3, in my view, has rightly argued that **in the absence of any allegations of fraud or misrepresentation, Directors cannot be held personally liable.** It is also not the case of the Plaintiff that the Directors were personal guarantors to the loan transaction or had assured to indemnify the amount. **It is a settled law that doctrine of lifting the corporate veil is available to the Plaintiff where it is permitted by the Statute or Corporate structure is instituted to perpetuate a fraud. The averments made in the plaint, in my view, do not justify the lifting of the corporate veil to make the Directors personally liable.** The cryptic observation of the Trial Court, that the facts and circumstances of the case attract

the principle of lifting the corporate veil, is not supported by the pleadings and I may also note that the order does not even give any reasons for having so held.”

(Emphasis supplied)

9.5. The High Court of Bombay in **AAKASH EDUCATIONAL SERVICES LIMITED** *supra* also observes that the Directors of a Company despite being the Managing Director or CEO are not necessary parties to the suit especially when no allegations are made against them and such Directors despite managing the day to day affairs, cannot be made party-defendants to the suit when the Company has already been made a defendant. The High Court holds as follows:

“33. Applying the aforesaid principles to the facts of the case at hand, evidently, the Defendant Nos. 2 and 3 have been impleaded as party Defendants for the reason that they were the Managing Director and CEO and Whole-time Director, respectively, of the Defendant No. 1-company, with an assertion that they were in-charge of and responsible for day to day management of the affairs of the Defendant No. 1-company. There is no assertion spelling out the particular role of Defendant Nos. 2 and 3 in the transactions in question. **The submission on behalf of the Respondents-Plaintiffs that the Defendant No. 2 has signed the Resolution passed by the Board of Directors in the capacity of the Managing Director of the Defendant No. 1-company or that the Defendant No. 3 has issued the letter of authorisation to execute the Leave and Licence Agreement on behalf of the Defendant No. 1-company in the capacity of the CEO and whole-time Director of the Defendant No. 1-**

company and, therefore, they are necessary parties to the Suit, does not merit acceptance. The Defendant No. 1-company being a corporate entity can sue and be sued in the said juristic character.

34. In the absence of any material to show that, in the absence of Defendant Nos. 2 and 3, the Suit cannot proceed and no effective decree can be passed, or how the presence of Defendant Nos. 2 and 3 is necessary for effective and complete adjudication of the Suit, the general allegations in the Plaint that the Defendant Nos. 2 and 3 were responsible for conduct of the business and day to day affairs of the Defendant No. 1-company and were liable for the acts of the company, are insufficient to sustain the impleadment of Defendant Nos. 2 and 3 as party-Defendants to the Suits.

.....

36. In the backdrop of nature of the Suits, the averments in the Plaint and the reliefs claimed therein, the Defendant Nos. 2 and 3, do not appear to be either necessary or proper parties to the Suits. If the submissions on behalf of the Respondents-Plaintiffs are readily acceded to and the Managing Director and CEO and Whole-time Director of the corporate entity are permitted to be impleaded sans any specific pleadings qua them, then there is an imminent risk that the Managing Director/CEO of the corporate entities would be dragged into a multitude of proceedings even though there is no cause of action qua such officers."

(Emphasis supplied)

9.6. Recently, the High Court of Delhi in **SHUSHANT MUTTREJA v. RAM KUMAR RATHI**¹⁰, held that while deciding an application under Order 1 Rule 10 of the CPC, the trial Court ought

¹⁰ 2025 SCC OnLine Del 2809

to examine whether the allegations are primarily against the Company or there is any personal liability of the Directors of the Company. The High Court observes as follows:

"17. The facts in the present case are however, entirely different. The suit filed before the learned Trial Court is a suit for recovery of monies paid to the Company. The Application filed by the Petitioners was dismissed by the learned Trial Court relying on a wrongful interpretation of the *Hariharnath* case that the directors of the Company (Petitioner Nos. 1 and 2) would be personally held as liable for the debts of the Company. **Thus, in order to ascertain personal liability, the plaint and the averments as set out in the plaint, were required to be looked into. There is no finding by the learned Trial Court of the personal liability of the Directors.**

18. A perusal of the plaint shows that the allegations in the plaint are primarily only against the Company. The Petitioners have contended that there is no personal liability of the Directors. It is further contended that even as per the plaint, the money was only paid to the Company. The learned Trial Court would have to examine all these contentions as well.

18.1. In the case of *Mukesh Hans v. Uma Bhasin* [2010 SCC OnLine Del 2776], a Coordinate Bench of this Court has held that **the Directors are not personally liable for the acts of the Company and owe no contractual duty qua a third party.** There are only two exceptions to this Rule viz. (a) if there is a personal guarantee, indemnity etc. and (b) if Director induces third party to act to his detriment by advancing loan to the Company and third party proves fraudulent misrepresentation. The relevant extract is reproduced below:

.....

21. The learned Trial Court is directed to examine the Application under Order VII Rule 11, CPC afresh as against the Petitioners/Directors of the Company. **So far as concerns,**

Application under Order VIII Rule 1 and Order I Rule 10 (2) of the CPC which were also dismissed by the learned Trial Court by the Impugned Order/Order in Review, the learned Trial Court is directed to examine these Applications afresh given the findings of this Court."

(Emphasis supplied)

TORT OF INDUCEMENT OF BREACH OF CONTRACT:

10. The other submission is that these petitioners should remain in the array of defendants for the tort of inducement of breach of contract. To bring home the tort of breach of contract what would be the requirements is recognized by the High Court of Delhi in the case of **AMWAY INDIA ENTERPRISES (PRIVATE) LIMITED v. 1MG TECHNOLOGIES (PRIVATE) LIMITED**¹¹ wherein it has been held as follows:

"....

323. The tort of inducement of breach of contract traces back its origin to the 19th century. The tort is enforced in a manner in which performance of contractual obligations are insisted upon even by third parties, who are not privy to the contracts. Under this tort, initially malice was required to be established for imputing liability. **However, as *Salmond and Heuston*⁵ puts it, the tort is now broad enough to include any interference with contractual relationships. The relevant extract is set out herein below:**

"The tort had its origin in the action for enticing away the servant of another. In Lumley v.

¹¹2019 SCC OnLine Del 9061

Gye, it was held that such an action lay even when the contract, the breach of which has been procured was not one of service in the strict sense of the term. It was, however, for some time believed that the principle so established was confined to cases where (i) the defendant's action was malicious and (ii) the contract in question was one to render exclusive personal services for a fixed period. But now it is perfectly well established that the scope of the action is not limited in either of these ways. Indeed, the modern cases indicate that the tort has become so broad as to be better described as unlawful interference with contractual relations.

.....
Proof of malice in the sense of spite or ill-will is unnecessary....."

324. The interference with contractual relationships need not only be direct, but it could also be indirect interference. As held in *Aasia Industrial Technologies* (supra), if any party procures breach of a contract, that is sufficient to constitute inducement of the breach, and make them liable under the tort. The relevant portion of the judgment of the Bombay High Court, is as under:

"16. Thus it is to be seen that the tort of inducing breach of contract, as now developed in England is that if the act of third party, either by persuasion, inducement or procurement results in breach of a contract, the third party would have committed an actionable interference with the contract. Again so far from persuading or inducing or procuring one of the parties to the contract to break it, the third party may commit an actionable interference with the contract, against the will of both and without the knowledge of either if with knowledge of the contract, he does an act which if done by one of the parties to it, would have been a breach. Of this type of interference the case of G.W.K. Ltd. (supra) affords a striking example. If, instead of persuading B of unlawful action against him, A brings about the break of the contract between B and C by operating through a third party. A may still be liable to C, provided unlawful

means are used. The act of the third party may be against the will of both and without the knowledge of either. It must however be with the knowledge of the contract. But the plaintiff is not obliged to prove that the defendant knew the precise terms of the contract breached; it is enough if the defendant's knowledge is sufficient to entitle the Court to say that he has knowingly or recklessly procured a breach. Proof of malice in the sense of spite or ill-will is unnecessary. It is no justification for the defendant to say that he had an honest doubt whether he was interfering with the plaintiff's contract, or that he acted without malice or in good faith. It is enough to show that the defendant did an act which must damage the plaintiff; it need not be proved that he intended to do so. It is certain that justification is capable of being a defence to this tort, but what constitutes justification is incapable of exact definition. It has been said that regard must be had to the nature of the contract broken, the position of the parties to the contract, the grounds for the breach, the means employed to procure it, the relation of the person procuring it to the person who breaks the contract, and the object of the person procuring the breach.."

325. In *Balailal Mukherjee & Co. (P) Ltd. v. Sea Traders Pvt. Ltd.*, 1990 SCC OnLine Cal 55 another case which recognised this tort, a Id. Single Judge of the Calcutta High Court, observed as under:

"13. Mr. Mukherjee appearing in support of the application relied strongly on the observations of Lord Denning in the off cited Court of Appeal decision in the case of *Torquay Hotel Co. Ltd. v. Cousins* reported in LR (1969) 2 Ch. Div. In that decision Lord Denning observed:

The principle of Lumley v. Gye (1853) 2 E. & B. 216 is that each of the parties to a contract has a "right to the performance" of it : and it is wrong for another to procure one of the parties to break it or not to perform it. That principle was extended a step further by Lord Macnaghten in Quinn v. Leeathem [1901] A.C. 495, so that each of the

parties has a right to have his "contractual relations" with the other duly observed. "It is," he said at page 510. "a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference....."

326. After reviewing the case laws, the Court held that the conduct of one of the brothers, who was a partner in the partnership firm, to induce breach by a Japanese customer of its contract with the firm, constituted a tort and the injunction was granted.

327. In the context of the present cases, e-commerce platforms such as Amazon, Flipkart and Snapdeal, carry out substantial sales of consumer products from their platforms. They have invested heavily in logistics and creation of a large network of suppliers, third party service providers, delivery personnel and warehousing facility, logistical support, etc. The said parties ought to be conscious of the sellers, whom they permit to operate on their platforms, and the kind of products that are being sold. They are not merely passive non-interfering platforms, but provide a large number of value-added services to the consumers and users. Upon being notified by the Plaintiffs of unauthorised sales on their platforms, they have a duty to ensure that the contractual relationships are not unnecessarily interfered with by their businesses. In the case of Amazon for example, the Intellectual Property policy, excluded products' list etc., clearly shows that there is a policy in place, that only authorised sellers can put up their products on the Amazon platform for sale, with the consent of the brand owners. The notices issued by the Plaintiffs, clearly, notified the platforms, who were offering the Plaintiffs' products, *inter alia*, as under –

.....

329. The tort of inducement of breach of contract and tortious interference with contracts is a well-recognised tort. However, the application of the said tort has to evolve with the changing practices of society including the commercial world. E-commerce platforms

have an obligation, upon being notified, to ensure that they do not induce breach of contracts in any manner. The least that ought to have been done is adherence to their own Intellectual Property Protection Policies and other policies such as '*Excluded products' list*', '*Banned Products' List*', and '*Terms of Use*'. The internal policies themselves being clear, the non-insistence of Plaintiff's consent from the sellers who wish to display the Plaintiffs' products on the platform, and non-insistence of authorization or documents showing that the seller on the platform was duly authorised to sell, by itself, constitutes inducement of the breach. Moreover, even after being notified the platforms refused to take down the products and insisted that only if the Plaintiffs establish that the products are counterfeit, they would be taken down."

(Emphasis supplied)

The High Court of Delhi in the afore-quoted judgment holds that interference with contractual relationship need not be direct, but it could also be indirect interference. If any party indulges in breach of contract, that is sufficient to constitute inducement of the breach. But there must be adequate material to demonstrate inducement for breach of contract. In the absence of adequate material, breach of contract or its inducement is unavailable.

10.1. In an earlier judgment, the High Court of Delhi in **ICC DEVELOPMENT (INTERNATIONAL) LTD. v. ARVEE**

ENTERPRISES¹², while discussing the essential elements for the tort of breach of contract by inducement, holds that in the absence of adequate material on record, the plea of inducement to breach the contract is not sustainable. The High Court observes as follows:

"20. The essential element for a cause of action based on breach of contract by inducement are (a) interference in the execution of the contract, (b) interference must be deliberate and (c) interference must be direct. In the present case, none of these ingredients have been made out. There is no averment in the plaint to show that defendants were aware or had knowledge of the contract between the plaintiff and the sponsors. Not only this, neither the sponsors nor the official tour operator and their agents have been impleaded as parties in the suit. In the absence of adequate material on record, the plea of inducement to breach the contract is also not sustainable. The terms and conditions with regard to the sale of tickets to the event, now pleaded by the plaintiff, did not form part and parcel of the agreement between the authorised agent of the Event and the defendants. The question whether the said conditions were known to the defendants or not, cannot be decided at this stage. This is a question of fact which can be determined only after the trial. (*Lonrho Ltd. v. Shell Petroleum Co. Ltd.*, (1981) 2 ALL ER 456) and *Merkur Island Shipping Corp. v. Laughton*, (1983) 1 ALL ER 334."

(Emphasis supplied)

10.2. Prior to the afore-quoted judgments of the High Court of Delhi, the High Court of Bombay in its earlier judgment in the

¹² 2003 SCC OnLine Del 2

case of **AMBIENCE SPACE SELLERS LTD. v. ASIA INDUSTRIAL TECHNOLOGY PVT. LTD.**¹³, holds as follows:

"7. The law regarding the Tort of Inducing breach of contract has long been recognised by English Courts. Before the English authorities are considered it would be appropriate to set out the ratio laid down by Supreme Court in the case of *Jaylaxmi Salt Works (P) Ltd. v. State of Gujarat* reported in (1994) 4 SCC 1. In this case the Supreme Court has held that injury and damage are two basic ingredients of the law of Tort. **The Supreme Court has held that the Tortious liability are breach of duty primarily fixed by the law while in contract they are fixed by the parties themselves. The Supreme Court has held that the law of Torts being a developing law its frontiers are incapable of being strictly barricaded. The Supreme Court has held that the ambit of Tortious law keeps on widening on the touchstone of fairness and practicality of the situation. The Supreme Court has held that truly speaking the entire law of Torts is founded and structured on morality i.e. that no one has a right to injure or harm others intentionally or even innocently. The Supreme Court has held that therefore it would be primitive to class strictly or to give finality to the ever-expanding and growing horizon of Tortious liability. The Supreme Court has held that a liberal approach to Tortious liability by Courts is more conducive for social development, orderly growth of the society and cultural refinement.**

13. Thus it is to be seen that the Tort of Inducing breach of contract, as now developed in England, is that if the act of third party, either by persuasion, inducement or procurement results in breach of a contract, the third party would have committed an actionable interference with the contract. The act of the third party may be against the will of both and without the knowledge of either. It must however, be with the knowledge of the contract. The same would be the result

¹³ 1996 SCC OnLine Bom 586

if the third party places a physical restraint upon one of the parties so as to prevent him from carrying out his part of the contract. It is to be seen that such action would be a direct invasion. It is to be further seen that this direct invasion need not necessarily lead to the conclusion that there should be monetary compensation. Such direct interference would itself be a wrongful act and would amount to an actionable interference of course any act honestly done by a person in furtherance of his own trade/profession, will not amount to a Tort of Inducing breach of contract, merely because it has induced such a breach. This because free and fair competition cannot be curtailed. The difference in all such cases is whether the act is done solely to carry on one's own trade or whether the act was done with intent to induce a breach or profiteer from somebody else's efforts."

(Emphasis supplied)

The High Court of Bombay in the afore-quoted judgment observes that the tort of inducing breach of contract, as developed in England, is that if the act of a third party, either by persuasion, inducement or procurement results in breach of a contract, the third party would have committed an actionable interference with the contract. The act of the third party may be against the will of both and without the knowledge of either, but it must however, be with the knowledge of the contract.

11. On the bedrock of the principles laid down by the Apex Court and several High Courts in the afore-quoted judgments what

would unmistakably emerge is that the role of the defendants must be seen by the concerned Court when an application is filed seeking impleadment of a defendant or deletion of a defendant and it is also to be seen whether the party who is sought to be impleaded is a necessary or party or a necessary witness. Further, Directors or employees/agents of a company cannot be held liable for acts of the company unless the plaint averments reveal that the Directors have committed fraud, misrepresentation or a tort of inducement of breach of contract.

12. What is to be seen now, is whether the order dated 19-07-2024, of the concerned Court, rejecting the applications of the petitioners under Order 1 Rule 10 of the CPC, filed for deletion from the array of defendants, can be sustained in light of the law laid down as discussed above. The order reads as follows:

"44. **Point No.1:** The learned counsel for these defendants have submitted their written arguments, basing on the contents of the application and affidavits annexed to these applications. They have pointed out towards the provisions of Order I Rule 10 of CPC. The defendant Nos.1 to 14 applied for job, but, they have been impleaded as defendants without any cause of action and without any reasons. The defendant Nos.3 to 24 are the employees of defendant No.2. The suit is filed by the plaintiff for alleged breach of the terms and conditions of the MSPA dated 09.05.2022 and NDA dated 09.05.2022. As per the say of

the plaintiff there was an alleged Agreement between the plaintiff and the defendant No.1 in respect to facilitation of H1B Visa approval for the employees of the defendant No.1 i.e. defendant Nos.11 to 24. They have also draw my attention towards the contents of the applications as well as affidavits as stated supra. These defendants are not necessary parties.

45. During their arguments, they have relied upon some decisions reported in (1992) 2 SCC 534 in Ramesh Hirechand Kundanmmal Vs Municipal Corporation of Greater Bombay. 2007 SCC Online Del 758 in Arjun Nath Vs British Airways.

46. Per contra, the learned counsel for the plaintiff has also submitted his arguments and he has pointed out towards the statement of objections filed to these applications. All these defendants are necessary parties to adjudicate the matter. He has pointed out towards the plaint averments as well as the defence raised by the defendant Nos.1 and 3 and other defendants have adopted these written statement.

47. During his arguments, he has relied upon the decisions reported in Hardeva Vs Ismail (MANU/RH/0036/1970). Udit Narain Singh Mlpaharia Vs Addl. Member, Board of Revenue, Bihar (MANU/SC/0045/1962), Mumbai International Airport Pvt. Ltd. Vs Regency Convention Centre & Hotels Pvt Ltd. in (2010) 7 SCC 417, Kasturi Vs Iyyamperumal in (2005) 6 SCC 733, Firm Mahadeva Rice and Oil Mills Vs Chennimalai Gounder (MANU/TN/0192/1968), Anil Kumar Singh Vs Shiv Nath Mishra in (1995) 3 SCC 147 and Abdul Jaleel Vs Aishabi in AIR 1992 Kar 380.

48. After hearing the learned counsel for the plaintiff and after going through the written arguments submitted by the learned counsel for the defendants, I have gone through the pleadings of the parties. This suit is filed by the plaintiff for the relief of recovery of a sum of Rs.40.00 Crores from the defendants. There are 24 defendants in this suit.

49. After going through the contents of these IAs and affidavits annexed to these applications, it is as good as the contents of the application filed under IA No.1 and contents of the affidavit annexed to it. The say of these defendants is, unnecessarily they have been made as parties to the suit. There are no grounds to implead them as defendants.

50. After going through the materials on records, defence raised by the defendant Nos.1 and 3, which is adopted by the other defendants, it is clear that, some of the defendants were the Ex-employees of the defendant No.1 company, there are some Agreements between the plaintiff company and some of the defendants. The 2nd defendant is the Managing Director of the defendant No.1 company. The 1st defendant initiated a NDA i.e. Non Disclosure Agreement and MSPA i.e. Master Services Partner Agreement with the plaintiff company. The 1st defendant initiated the H1B MSA Agreement on 10.06.2023 for business collaboration regarding the deployment of H1B candidates and cunningly obtained the plaintiff's signature. It is forthcoming in the plaint averments. The defendants have denied these allegations made in the plaint.

51. I have gone through the decisions relied upon by the learned counsel for the defendant Nos.3 to 24. The principles laid down in these decisions are well founded. I have gone through the decisions relied upon by the learned counsel for the plaintiff company. The principles laid down in these decisions are well founded. These decisions come to the aid of the plaintiff company at this juncture of the suit. Since the defendant Nos.3 to 24 have filed their defence. Therefore, a full dressed trial is required, without the presence of these defendant Nos.3 to 24, the suit may not be adjudicated effectively. Therefore, in the light the discussions made supra, the defendant Nos.3 to 24 have not made out grounds to delete them from the suit. Accordingly, I answer the Point No.1 in the negative.

52. **Point No.2**: In view of the discussions made supra, I made the following:

ORDER

The applications filed on behalf of the defendant Nos.3 to 24 U/Or. I Rule 10 CPC, as I.A.Nos. I to XVIII are hereby rejected.”

(Emphasis added)

The concerned Court in the afore-quoted order fails to observe the specific role of each defendant in the plaint and without sufficient reasons rejects the applications under Order 1 Rule 10 of the CPC. I therefore, deem it appropriate to notice the individual role of each petitioner as averred in the plaint.

12.1. Role of petitioner No.1 Company/defendant No.3:

There are allegations against the 1st petitioner/defendant No.3 Company in the plaint for inducement of breach of contract. The plaint averments show that the petitioner No.1 company despite knowledge of the existing contract between respondents 1 and 2 Companies, induced respondent No.2 and acquired respondent No.2 during the exclusivity period. A *prima facie* case and cause of action for the tort of procurement of breach of contract is made out against petitioner No.1 Company/defendant No.3 and petitioner

No.1 would be required for effectively deciding the case and providing the necessary reliefs to the plaintiff.

12.2. Role of petitioner No.2/defendant Nos.4 and 5:

There the plaint averments reveal no allegations against petitioner No.2/defendants 4 and 5 regarding the involvement of petitioner No.2 in inducing the breach of contract. Further, if required, it is always open to the concerned Court to direct petitioner No.2 to appear as a witness in the case before the Court. Therefore, though petitioner No.2 might be a necessary witness he is not a necessary party to the case, as no cause of action has been made or pleaded against petitioner No.2. The relief claimed by the plaintiff and the dispute between the parties, can be effectively adjudicated without the presence of petitioner No.2 as a party to the case.

12.3. Role petitioner No.3/defendant No.10:

The only allegation against petitioner No.3 in the entire plaint is that petitioner No.3 in the capacity of Director, Physical Design of petitioner No.1 company, had replied to respondent No.1/plaintiff when the M&A between Respondent No.2 and petitioner No.1 was finalized. This action of petitioner No.3 cannot constitute the tort of

inducement of breach of contract, since petitioner No.3 was only acting as an agent of petitioner No.1 company while responding to the plaintiff. There are no other allegations to satisfy the tests set by various Courts for inducement of breach of contract, and no cause of action has been made out in the suit against the petitioner No.3. It is always open to the concerned Court, if required, to direct Petitioner No.3 to appear as a witness in the case before the Court and this by itself does not make him a necessary party, as no specific claims or reliefs are made against petitioner No.3. Further, the suit can be adjudicated effectively without the presence of petitioner No.3 as a party-defendant to the case.

12.4. Role of petitioners 4 to 6/defendants 11 to 13:

Petitioners Nos. 4, 5, and 6 being the erstwhile Directors of respondent No.2 Company are merely agents of the said Company. They were not party to the contract between respondent No.1 and respondent No.2 Company and owe a fiduciary duty only to respondent No.2 Company and not to other third parties. The plaint averments reveal no assertions regarding how they have breached the contract and therefore, no cause of action has been made out

against petitioner Nos. 4 to 6. They can all however, be brought in, as witnesses by the concerned Court, if required, during the course of the trial. The relief claimed and the dispute in the case can be effectively adjudicated without the presence of petitioners Nos. 4 to 6 as party defendants to the case.

12.5. Role of petitioners 7 to 17/defendants 14 to 24:

Petitioner Nos. 7 to 17 being the ex-employees of respondent No.2 Company are merely agents of the Company and have no connection to the dispute between the parties and no cause of action has been made out against them in the entire plaint. Further, the learned counsel appearing for the respondent No.1 Company himself submits that he does not have any objection to petitioner Nos. 7 to 17 being deleted from the array of defendants.

13. The concerned Court while rejecting the applications does not advert to the role of petitioner Nos. 2 to 17 to keep them in the array of defendants or delete them. In the light of their role being restricted as noticed hereinabove; no cause of action being made out against them; they not being signatories to any of the agreements and merely being Directors of the Company, they

cannot be permitted to undergo the rigmarole of judicial proceedings. As against petitioner No.1 Company, there are specific allegations in the plaint against the said company and is required for effectively adjudicating the matter and providing necessary relief's as claimed by the plaintiff.

14. In the light of absence of pleadings with regard to the specific role of petitioner Nos. 2 to 17, the order of the concerned Court which rejects the applications notwithstanding their roles as narrated above, cannot be sustained. A case of tortious inducement of breach of contract having been made out against petitioner No.1 Company, the Petitioner No.1 Company does not deserve to be deleted from the array of parties. In that light, the applications under Order 1 to 10 of the CPC, filed by petitioner Nos.2 to 17, ought to be allowed.

17. For the aforesaid reasons, the following:

ORDER

- (i) **Writ Petition is allowed in part.** The order dated 19-07-2024 passed by the LXXXIV Additional City Civil

and Sessions Judge (CCH-85) (Commercial Court), Bengaluru on I.A.Nos. I to XVIII in Commercial O.S.No. 1495 of 2023 stands quashed *qua* all other defendants, except defendant No.3/petitioner No.1.

- (ii) The applications filed by the petitioner Nos. 2 to 17 under Order 1 Rule 10 of the CPC are allowed. Petitioners Nos. 2 to 17 who are defendant Nos. 4, 5 and 10 to 24 before the concerned Court stand deleted from the array of parties/defendants.
- (iii) Any observation made in the course of the order is only for the purpose of consideration of the impugned order *qua* the applications under Order 1 Rule 10 of the CPC. The observations in no way influence pending proceedings before the concerned Court *qua* the remaining parties.

Consequently, I.A.No.1 of 2025 also stand disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:SS