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

+ CM (M) 1674/2019 & CM APPL. 50559/2019

AAA VEHICLEADES PVT LTD Petitioner

Through: Mr. Aman Shanker, Adv.

versus

BALKISHAN GUPTA Respondent

Through: Ms. Hena Lamba and Mr. Amit
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **24.05.2022**

1. On 6th May, 2012, the respondent sold his Maruti Car to the appellant.

2. According to the averments in CS 577272/2016 instituted by the respondent against the petitioner, and from which the present petition emanates, the delivery receipt issued by the petitioner to the respondent required the petitioner to get the vehicle transferred in the petitioner's name and to take full responsibility for maintenance, accidents, road tax, police challans etc., in respect of the car.

3. The respondent alleges that the petitioner reneged on the said assurance, and did not have the car transferred in the name of the petitioner. The respondent claims to have come to know of this fact when the car was involved in a fatal accident, and summons, from the learned Motor Accidents Claim Tribunal (MACT) were received by

the respondent.

4. The plaint also acknowledges the fact that the car was successively sold, thereafter, by the petitioner to Gulshan and further, to Shamshad and to Amit. Despite this succession of transactions, the respondent alleged that the petitioner, in violation of the undertaking contained in the delivery receipt issued to the respondent, failed to have the car transferred in his name and that the car therefore continued to remain registered in the name of the respondent.

5. Predicated on these assurances, and the alleged failure by the petitioner to abide thereby, the respondent sued the petitioner for an amount of ₹ 18 lakhs along with interest, representing the expenses that the respondent claims to have had to suffer in prosecuting the litigations which arose out of the aforementioned accident.

6. Said suit (CS 577272/2016) is stated to be pending before the learned Additional District Judge (“the learned ADJ”).

7. The petitioner moved an application, under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) in the aforesaid CS 577272/2016, seeking impleadment of the persons to whom the car was transferred after it left the hands of the petitioner, namely, Gulshan, Shamshad and Amit.

8. The impugned order dated 17th August, 2019, passed by the learned ADJ, rejects the said application.

9. Aggrieved thereby, the present petition has been preferred, invoking the jurisdiction of this court under Article 227 of the Constitution of India.

10. The learned ADJ has, in rejecting the petitioner's application, noted that the choice of the persons to be sued is the prerogative of the plaintiff. In the present case, the respondent-plaintiff chose to sue the petitioner.

11. Admittedly, there is no privity of contract between the respondent and Gulshan, Shamshad or Amit, whom the petitioner seeks to implead in the suit. Inasmuch as the suit was directed against the petitioner, and damages were claimed only from the petitioner, the learned ADJ has held that the impleadment of Gulshan, Shamshad and Amit was unnecessary. The learned ADJ has, on this basis, rejected the petitioner's application under Order I Rule 10 of the CPC.

12. In my view, the impugned decision of the learned ADJ is unexceptionable, both on facts as well as in law.

13. It is, truly, the prerogative of the plaintiff to choose whom to sue. In case the plaintiff sues a party who is not liable, and fails to sue the parties who are liable, she/he does so at her/his own risk and costs.

14. The impugned order of the learned ADJ notes as much, and protects the petitioner, by observing that the respondent-plaintiff

would “(have) to face necessary implications as per law in case the said proposed defendants are found to be necessary parties after conclusion of trial”.

15. A defendant in a plaint cannot insist that the plaintiff should sue a third party. He can only defend the plaint qua the allegations against him. It is open to a defendant to contest his liability, qua the plaintiff, and, in an appropriate case, the defendant may also be entitled to move an application for rejection of the suit outright, if it fails to make out any sustainable cause of action against the plaintiff invoking, for the purpose, Order VII Rule 11 of the CPC.

16. A defendant cannot insist that the plaintiff should sue a party whom the plaintiff has not chosen to sue. If the plaintiff fails to sue a necessary party, it would, as the learned ADJ has correctly noted, be at the risk and cost of the plaintiff.

17. The test for determining the parties who would be necessary or proper in a *lis* are, by now, trite and well established. Parties against whom reliefs are claimed in the petition and parties who would be prejudicially affected if the reliefs in the petition/plaint are granted are necessary parties in the plaint. Parties whose presence is necessary in order to enable the court to meaningfully adjudicate the controversy in the plaint are proper parties. This aspect has been lucidly enunciated by the Supreme Court in ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay***¹.

¹ (1992) 2 SCC 524

18. Viewed any which way and applying the aforesaid test, it cannot be said that Gulshan, Shamshad and Amit were either necessary or proper parties in the present case.

19. The relief sought by the respondent was squarely against the petitioner. The presence of Gulshan, Shamshad and Amit is not required in order to determine the issues in controversy in the plaint. Nor would Gulshan, Shamshad or Amit be affected by grant or refusal of the reliefs in the plaint.

20. Learned Counsel for the petitioner sought to justify the prayer for inclusion, in the proceedings, of Gulshan, Shamshad and Amit on the ground that they were parties in the proceedings before the learned MACT from which, according to him, the present suit germinated. That, however, is not an appropriate test to determine necessary and proper parties, within the peripheries of Order I Rule 10 of the CPC.

21. To reiterate, only such parties against whom such reliefs are sought, who would be affected by the reliefs granted in the plaint or whose presence is required for the court to meaningfully adjudicate the controversy in the plaint, would be necessary and proper parties.

22. Tested on this touchstone, no exception can be taken with the impugned order dated 17th August, 2019, of the learned ADJ, which correctly holds that the prayer for impleadment of Gulshan, Shamshad and Amit in the proceedings was not justified and, on that ground,

rejects the petitioner's application under Order I Rule 10 of the CPC.

23. The petitioner's interests have also been adequately protected by the learned ADJ by the observation that, in case it is found that Gulshan, Shamshad and Amit were necessary parties, the respondent would have to suffer the consequences of their non-impleadment.

24. In view thereof, no occasion arises for this Court to interfere with the impugned order dated 17th August, 2019 in exercise of its jurisdiction under Article 227 of the Constitution of India.

25. This petition is accordingly dismissed, with no order as to costs.

MAY 24, 2022

dsn

C. HARI SHANKAR, J

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