

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

+ CS(OS) 51/2019

SATYA PRAKASH & BROS (P) LTD. & ANR Plaintiffs

Through: Mr. Anil K. Airi, Sr. Adv. with Mr. Shailendra Babbar, Ms. Manisha Parmar, Ms. Siddhi Mittal, Mr. Kapil Chaudhary, Ms. Sukanya Lal & Mr. Mudit, Advs.

Versus

QUTAB REALCON PVT. LTD. & ORS. Defendants

Through: Mr. Rajiv Bajaj, Adv. for D-1,2,4&5.
Mr. Deepak Vohra, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.09.2019**

IA No.8886/2019 (of defendant no.3) & IA No.9150/2019 (of defendants No.1,2,4&5) [both for leave to defend]

1. The counsel for defendants no.1,2,4&5 has been heard.
2. This suit under Order XXXVII has been filed on the basis of a Receipt / Settlement of Deal claimed to be executed by the defendant no.2 Piyooosh Goel and on the basis of dishonoured cheques, all issued by defendant no.1 Qutab Realcon Pvt. Ltd.
3. It is the claim of the plaintiffs that the Receipt / Settlement of Deal document has been signed by defendant no.2 Piyooosh Goel on behalf of defendant no.1 Qutab Realcon Pvt. Ltd., though the document does not say so.
4. Besides defendant no.1 Qutab Realcon Pvt. Ltd. and defendant no.2 Piyooosh Goel, Abhishek Saraf, Hanuman Singh and Ravi Kumar claimed to

be the Directors of defendant no.1 Qutab Realcon Pvt. Ltd. have also been impleaded as defendants no.3 to 5.

5. I have straightaway enquired from the senior counsel for the plaintiffs, how the suit against other than those privy to the documents i.e. Receipt/Settlement of Deal and cheque(s), has been instituted under Order XXXVII of the CPC. Even if the defendants no.3 to 5, as Directors of defendant no.1 company, have signed any of the cheques, the same would not make them personally liable for the amount of the cheque.

6. A suit under Order XXXVII of the CPC is maintainable only if a claim within the ambit of Order XXXVII is made thereunder.

7. The plaintiffs having claimed reliefs in the suit against persons other than those privy to documents on the basis of which suit under Order XXXVII of the CPC has been filed, notwithstanding the suit having been entertained without noticing the said aspect by the learned Joint Registrar, the suit cannot be permitted to be treated as under Order XXXVII of the CPC.

8. The contention of the senior counsel for the plaintiffs at this stage that the plaintiffs are willing to drop defendants no.3 to 5 is of no avail.

9. The maintainability of the suit under Order XXXVII of the CPC has to be decided at the threshold. In fact, Order XXXVII Rule 2(b) requires the plaintiffs to expressly state that no relief, other than that falling within the ambit of Order XXXVII of the CPC, has been claimed.

10. The senior counsel for the plaintiffs has argued that only a plea to the said effect is to be made.

11. The fact that a plea is required to be made, shows that the plaintiffs cannot make a claim besides that within the ambit of Order XXXVII of the

CPC and the moment the plaintiffs make such a claim, the plaintiffs ought to have been ousted on the very first day from proceeding under Order XXXVII of the CPC and the mere fact that the learned Joint Registrar entertained the suit will not come in the way of this Court now correcting the mistake.

12. The suit having been found to be not maintainable under Order XXXVII of the CPC, these applications are infructuous.

13. The applications are disposed of as infructuous.

CS(OS) No.51/2019

14. Written statements be filed within 30 days from today.

15. Replication within further 30 days thereafter.

16. Affidavits of admission/denial of each others' documents be filed along with the written statement and the replication.

17. List for framing of issues if any on 28th April, 2020.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 30, 2019

'gsr'