

(2012) 08 DEL CK 0171**Delhi High Court****Case No:** CM (M) 891 of 2012

M/s. Red Zebra Gift Promotion
Pvt. Ltd. and Another

APPELLANT**Vs**

Pournavi Events Pvt. Ltd.

RESPONDENT**Date of Decision:** Aug. 8, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227

Hon'ble Judges: M.L. Mehta, J**Bench:** Single Bench**Advocate:** Jayant Mohan, for the Appellant;**Final Decision:** Dismissed

Judgement

M.L. Mehta, J.

This petition has been preferred under Article 227 of the Constitution of India against the order dated 04.05.2012 passed by the learned ADJ (West), Delhi in Civil Suit No. 436/2010. The petitioner No. 2 and 3 are the Directors of the petitioner No. 1 Company, whereas respondent is an event management company. The said civil suit was filed by the respondent/plaintiff through its authorized representatives on 05.06.2010 for the recovery of an amount of Rs.11,56,300/- along with interest before the learned ADJ. The respondent submitted that it had placed an order for supply of motorcycle shaped 560 pen drive of 2GB specification with the petitioners. The said pen drives were to be utilized by the respondent for a promotional event of India Yamaha Motor Pvt. Ltd. and were to be delivered to it latest by 04.07.2009. It was alleged by the respondent that the petitioners did not fulfill their part of the agreed promise due to which it had to lose one of their very important clients. A legal notice dated 29.09.2009 was also sent by the respondent to the petitioners demanding refund of amount of Rs.1,39,500/- along with interest @ 24% per annum, coupled with Rs.50,00,000/- as damages, but, to no avail.

2. Vide the impugned order an application under Order 1 Rule 10 of the Code of Civil Procedure, filed by the petitioners for deletion of their names from the memo of parties, was dismissed by the learned ADJ along with cost of Rs.5,000/-. The said order has been challenged by the petitioners on the ground that the petitioners, who are the Directors of the company are not liable for the acts of the Company, unless specific averment is made in the plaint. It has been further submitted that the Directors of the company cannot be made a party to the suit filed by the respondent inasmuch as the company is a separate entity, which can sue and be sued separately.

3. There is no doubt about the fact that a company is a separate legal entity and has a distinct identity from Directors, but, this protection afforded to the Directors of the company is not ironclad or impenetrable. In reality, individuals/persons are the ones, who run the company in the hope of reaping benefits out of it. In a case where a court determines that a company's business was not conducted in accordance with the provisions of corporate legislation, it can pull up the "corporate veil" and discover the true culprit. This lifting of "corporate veil" is essential for the purpose of determining the persons who are liable for any fraudulent or unlawful practices done in the garb of running a corporate body. In the instant case, the petitioners being the Directors of the defendant Company were responsible for its day to day affairs and have been actively involved in the communications made before and after the placing of the order of supply of the pen drives. *Prima facie*, it cannot be said that they had no role to play in the entire failed transaction and they are, no doubt, necessary parties to the civil suit filed by the respondent. In view of the above discussion, I find no merit in the present petition and hence the same is hereby dismissed. Nothing in this order shall tantamount to expression of opinion on merits of case.