(2005) 10 DEL CK 0059

Delhi High Court

Case No: IA 2429 of 2004 in CS (OS) 1128 of 2003

Ms. Anjum Nath		APPELLANT
	Vs	
British Airways Plc and Others		RESPONDENT

Date of Decision: Oct. 19, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), Order 1 Rule 3(2), Order 6 Rule 16, Order 7 Rule 11, 151

Citation: (2005) 125 DLT 717

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Kirti Uppal, for the Appellant; Amar Singh Pasrich and S. Valarmathi for Defendant Nos. 1 and 2, for the Respondent

Judgement

Anil Kumar, J.

This order shall dispose of the application of the defendants No. 1 and 2 under Order I rule 3(2) and rule 10(2) read with Order VII Rule 11 and Section 151 of the Code of Civil Procedure. The defendant Nos. 1 and 2, British Airways Plc. has sought deletion/striking out the names of Mr. Andy Stern and Mr. Neil Robertson, defendant Nos. 3 and 4. The applicant also seeks amendment to the cause title of the suit on the ground that British Airways Plc having addresses at DLF Plaza Tower, DLF City, Phase-I, Gurgaon-122002, Haryana and at Flat No. 2, 11th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001 are the same entity having two different addresses.

2. The applicant contended that defendant Nos. 3 and 4 are the executives to whom plaintiff reported in her capacity as an employee of British Airways and the plaint does not contain any reference to said defendants except their capacity as executives/employees of British Airways Plc. The applicant seeks deletion of defendant Nos. 3 and 4 on the ground that from the allegations made in the plaint,

no relief can be claimed against them. It is asserted that plaintiff with illegal and with malafide intentions has filed the suit against defendant Nos. 3 and 4 and these defendants have only been imp leaded with a view to pressurize the British Airways Plc, to settle her claim though there is no personal involvement of defendant Nos. 3 and 4 who are neither liable under any contact of employment nor are they personally liable for the plaintiff''s employer nor the plaintiff had at any time contracted with them or had been engaged by them as employers of the plaintiff in their personal capacity. On these grounds the applicant/British Airways Plc has claimed rejection of the plaint against defendant Nos. 2, 3 and 4 and has sought striking out defendant Nos. 2, 3 and 4 from the array of defendants in the memo of parties and claims that suit be continued only against British Airways Plc at its head office in India, i.e., DLF Plaza Tower, DLF City, Phase-I, Gurgaon-122002, Harayana.

3. Though the application is filed by the defendants No. 1 and 2, British Airways Plc, the application is supported by an affidavit of Mr. Andy Stern, General manager, South Asia of M/s. British Airways Plc, who is also the defendant No. 3 in the above-noted suit.

4. The plaintiff/non-applicant has opposed the application contending that the application has been filed one year after the filing of the written statement and for the purposes of application under Order VII Rule 11 of Code of Civil Procedure, the averments made in the plaint only have to be looked into. There are specific allegations against defendant Nos. 3 and 4 who were responsible for illegal, wrongful and arbitrary acts committed on behalf of defendant Nos. 1 and 2 which has led to the present disputes. Consequently, they have been rightly imp leaded as parties to the present suit. The plaintiff has relied on various paras of the plaint and has stated that defendant Nos. 3 and 4 were responsible for depriving the plaintiff from her legitimate dues and Therefore, they are also liable. The plaintiff contended that whether the defendants are necessary parties or not and whether no relief of recovery and declaration can be granted can be decided only after trial. The plaintiff contended that he is do inus litus and in view of specific averments against these defendants and the decree of recovery and declaration sought against them, they cannot be deleted as parties to the suit on the basis of averments made by the defendant Nos. 1 and 2. Regarding defendant No. 3, it was contended that he was a party to pressurizing and coercing the plaintiff and defendant No. 4 misled the plaintiff. It has been also asserted that defendants No. 3 and 4 are jointly and severely responsible and liable for the acts of British Airways Plc.

5. The learned counsel for defendants/applicants has relied on M.T.N.L. Vs. V. K. JAIN, TBWA Anthem Private Limited Vs. Mr. Madhukar Kamath and Another, ; Steel Authority of India Ltd. Vs. Colet Steels Pvt. Ltd. and Others, ; Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, and Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, to contend that the defendant Nos. 3 and 4 are not necessary parties and this can be assessed and

inferred from the allegations made in the plaint and they are liable to be deleted.

6. Rejection of plaint is a serious matter as it non suits the plaintiff and kills the cause of action and consequently it cannot be ordered cursorily without satisfying the requirement of the said provision. It is no more rest integra that to decide under Order VII Rule 11, averments in the plaint have to be read without looking at the defense and thereupon it has to be seen whether on the averments made in the plaint, Order VII Rule 11 get attracted or not and thereafter it has to be seen whether a party is to be deleted on the ground that no cause of action has been alleged against him and he has been joined improperly. Legal proposition that to decide under order 7 rule 11, averments in plaint only have to be read without looking at the defense and hereupon it has to be seen whether on the averments made in the plaint, order 7 rule 11 gets attracted or not can not be disputed nor has been disputed by the applicant. Reliance for this proposition can be placed on 2005 (4) AD (Del) 541, Kanwal Kishore Manchanda v. S.D. Technical Services Pvt. Ltd.; 2005 (2) AD (Del) 430 , Arvinda Kumar Singh v. Hardayal Kaur; Asha Bhatia Vs. V.L. Bhatia, , Asha Bhatia v. V.L. Bhatia; 2003 (5) AD (Del) 370 , Punam Laroia v. Sanjeev Laroia; Condor Power Products Pvt. Vs. Sandeep Rohtagi,

7. In the suit filed by the plaintiff, a decree for a sum of Rs. 55.00 lakh is claimed in favor of plaintiff and against the defendants and similarly a decree of declaration is sought against all the defendants. The averments have been made against the defendants No. 3 in paras No. 8, 10, 12 and 13. Some of the relevant averments are extracted for reference:-

"8. The defendant No. 3 on one hand wrongly claimed that plaintiff had resigned, however, on the other hand he acknowledged that plaintiff had applied for a scheme which as stated hereinafter, should have read as Indian Early Retirement Scheme.

10. The plaintiff was assured by defendant No. 3 that she would get a fair handling and severance pay under the Indian Early Retirement Scheme which was applicable in India. In fact, the Defendant No. 3 assured plaintiff on 10.7.2002 that he would meet her on his return from his annual leave and personally sort out matters.

12. In the face of a totally unreasonable and hostile attitude of the concerned persons, the plaintiff also forwarded an appeal to Defendant No. 3 Mr. Andy Stern on 25th July, 2002 wherein she gave the complete facts leading to her submitting letter dated 8.7.2002 and opting for the U.K. Business Response Scheme. The Defendant No. 3 all along assured plaintiff that she would be treated fairly. However, there was no further response from Defendant No. 3 after an official meeting with the plaintiff at the British Airways Office in Gurgaon on 12.08.2002. Consequently, the plaintiff sent an e-mail dated 25.8.2002 setting out the commitments made by Defendant No. 3. In response to this defendant No. 3 vide e-mail dated 2.9.2002 advised the plaintiff that all future communications would be

handled by Mr. Cyril Daniels, plaintiff''s successor and newly appointed HR and Corporate affairs Manager South Asia and thus Defendant No. 3 wanted to wash his hands of the matter as he knew very well that plaintiff was being unfairly and unjustly treated.

13. The plaintiff immediately protested against the aforesaid inappropriate behavior as all such communications with a Senior Manager is ordinarily the responsibility of the Senior Designated official of British Airways in India, which in this case was the General Manager South Asia, Mr. Andy Stern. However, no further communication was received from the defendant No. 3."

8. Similarly, specific averments have been made in the plaint regarding defendant No. 4 in paragraphs 14, 15 which are extracted for reference:-

"14. Thereafter, the plaintiff was compelled to sent a detailed appeal to defendant No. 4 in U.K on 8.10.2002 wherein he was apprised of all the developments and the plaintiff appealed for justice. The defendant No. 4 sought time to look into the matter vide his e-mail of 9.10.2002.

15. The Defendant No. 4 finally responded on 28.10.2002 wherein he did not specifically deny that the plaintiff had been unfairly treated and not in line with the best traditions and ideals of how British Airways would normally deal with these situations however he sought to justify all the arbitrary and illegal actions by relying on what Ms. Amanda Ball had told him. The said defendant tried to give wholly untenable justification for denying plaintiff her dues. In other words, the defendant No. 4 also did not redress the grievances of the plaintiff."

9. Are these averments not sufficient to continue the action against the defendant Nos. 3 and 4 and can it be inferred that they have been joined as parties improperly? Can a person be liable in such a situation only if he has employed an employee under him who is claiming a declaratory decree and damages and not otherwise? Whether there can not be liability of a manager or of a superior officer despite assurance to treat fairly and thereafter not treating fairly and giving unjustifiable reasons and denying what is legally and legitimately due to an employee and misleading her. The plaintiff claims decrees for recovery jointly and severally against the managers and superiors of the defendant No. 1 where she was employed. The defendant No. 1 claims that without adjudicating the pleas and contentions of the plaintiff, it be held that she can not claim any amount against her managers and superior officers and those who misled her and deliberately misled her. Whether these pleas and contentions raised by the defendants can be considered for rejection of plaint against defendant Nos. 3 and 4 and for deleting them as a party without an opportunity to the plaintiff to substantiate her pleas and claims against managers and superior officers despite the fact that she was not employed by them but she was employed by the defendant No. 1. What emerges is that though the defendant Nos. 3 and 4 did not employ the plaintiff but they have contributed to the

alleged damages suffered by the plaintiff and which is claimed by her. plaintiff has claimed arrears of his dues and damages.

10. The judgments relied on by the applicants are apparently distinguishable and do not support the plea of the applicant to reject the plaint under Order VII Rule 11 against the defendant Nos. 3 and 4 and to delete them as party and holding that they are not jointly and severally liable and have been imp leaded improperly. In MTNL and Anr. (supra) which was a case for expunging, scandalous and vexatious and unnecessary remarks, it was held that the test to ascertain whether the averments are scandalous, vexatious and unnecessary, is whether the allegations of the applicant could form part of the evidence-in-chief which the plaintiff would be bound to lead for the purposes of relief. The learned Single Judge held that the allegations made against defendant No. 3 in that case were not relevant to the issue or matter in controversy in suit and no relief was sought on the ground of alleged dishonest conduct of the Dy. General Manager (Legal) and in the circumstances, the application under Order VI Rule 16 as allowed. However, in the case of plaintiff, specific averments have been made regarding the conduct of defendant Nos. 3 and 4 and in the prayer, a decree for declaration and recovery has categorically been sought against them jointly and severally. Similarly, the case of TBWA Anthem Pvt. Ltd. (supra) is also distinguishable as defendant No. 2 in that mater was another advertising agency which alleged to have colluded with defendant No. 1 and had tried to entice him to join defendant No. 2, however, the defendant No. 1 had not joined the other advertising agency and in those circumstance, it was held that another advertising company which had tried to entice the defendant No. 1 to join him could not be a necessary party in a suit for damages as there was no agreement between the plaintiff and another advertising company, defendant No. 2 and consequently, the name of the other advertising agency was deleted. In the matter of Steel Authority of India Ltd. (supra), two Directors who had resigned from the company and whose resignation was notified and intimated to the Registrar of Companies and who had severed all links with the company were held to be not necessary parties in settling disputes against the company and especially since the suit had already bee decreed against the defendant and the promoters. In the present case, however, specific averments have been made by the plaintiff against the conduct of the defendant Nos. 3 and 4 and on the basis of averments made against them relief has been claimed jointly and severally with the British Airways Plc. In the circumstances, it can not be inferred that the cause of action disclosed against them is irrelevant and will not entitle the plaintiff for any relief against them. Whether the cause of action disclosed against them will fructify into a decree or not has to be seen and determined.

11. In another matter relied on by the applicant, Anil Kumar Singh (supra), it was held that under Order I Rule 10(2), though the Court has power to strike out the name of a party inappropriately joined or add a party either on application or without application of either party but the condition precedent is that the Court

must be satisfied that the presence of the party to be added would be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. The object of the Rule is to bring on record all the persons who are parties to the disputes relating to the subject matter, so that the disputes may be determined in their presence at the same time without any protection, inconvenience and to avoid multiplicity of proceedings. In the said matter, a person who was not a party to the agreement to sell was held neither a necessary nor a proper party and was deleted whereas in Ramesh Hirachand Kundanmal (supra), another precedent relied on by the applicant, a person who had no interest in the chattels and the demolition of the same in pursuance of the notice was held to be not a necessary and appropriate party.

12. The case of the plaintiff is apparently and clearly distinguishable from all the precedents relied on by the defendants/applicants as the specific averments have been made against defendant No. 3 and 4 and on the basis of them, a decree of declaration and recovery of Rs. 55.00 lakh has been sought. From the averments made in the plaint, in my opinion in the facts and circumstances, it can not be held that the plaintiff shall not be entitled for any amounts from the said defendants. It can not, Therefore, be said that the defendant Nos. 3 and 4 have been joined improperly. In the circumstance, it cannot be inferred that the plaint does not disclose any cause of action against defendants No. 3 and 4 or that no liability can be imputed to the defendant Nos. 3 and 4 on the basis of averments made in the plaint. The pleas of the plaintiff, in my opinion, require adjudication after evidence by the parties. In the circumstances, I am reluctant to hold that the defendant Nos. 3 and 4 have been joined improperly or heir presence will not be necessary to effectively and completely adjudicate upon and settle all questions involved in the suit. The plea of the applicant that the plaint does not disclose anything against the said defendants except their capacity as executive employees of the British Airways Plc is also contrary to record.

13. Another factor which dissuades me from holding that the defendant Nos. 3 and 4 have been joined improperly, is because the defendant Nos. 3 and 4 have not filed the application contending that they are not the necessary parties and have been joined improperly nor has made any prayer to delete them. Though the application filed by British Airways Plc is supported by the affidavit of Defendant No. 3, however, this will not make defendant Nos. 3 and 4 as the applicant. Why the employee of British Airways Plc, against whom specific averments have been made, did not file an application contending that they have been imp leaded improperly and why the British Airways Plc had to file the application, has not been explained satisfactorily by the counsel for the applicant.

14. In the circumstance, the inevitable inference is that the plaint discloses cause of action against the defendant Nos. 3 and 4 and the relief has been prayed against them and they are necessary parties and have not been joined improperly and

presence will be necessary to effectively and completely adjudicate upon and settle all questions involved in the suit. The plaintiff being `dominus litus'' cannot be directed not to raise pleas against the erring officials and managers of the incorporation where she was employed and disclose cause of action and claim relief against them. Whether the plaintiff will ultimately succeed against them will be decided after adjudication and not merely on the pleas raised by the plaintiff in the present facts and circumstances. Whether ultimately the defendants No. 3 and 4 shall be liable for the declaration sought by the plaintiff and recovery of Rs. 55.00 lakh or any other amount from them shall be determined on the basis of the evidence adduced by the parties. In the circumstances, the application seeking relief of deletion of defendant Nos. 3 and 4 is without any merit and is dismissed.

15. The next plea of the applicant is that the defendant Nos. 1 and 2 are the same entity having different addresses. Can an entity having different addresses be termed as different entities in the facts and circumstance? A legal entity having different addresses does not become different entities nor any law and precedent has been shown by the counsel for the plaintiff to show that a legal entity having different addresses becomes different and distinct and can be sued as two distinct entities. Considering the facts and circumstance, I am, Therefore, of the view that British Airways Plc which is a legal entity cannot be described as different and distinct entities on the basis of its different offices and addresses where cause of action allegedly arose against it and could not be imp leaded as defendant Nos. 1 and 2. Consequently, plaintiff ought to have sued British Airways Plc as a single entity but she could give its different locations and offices where alleged cause of action has arisen against it.

16. In the facts and circumstances, the plaintiff is liable for a direction to sue British Airways Plc as a single entity, a single defendant. However, the plaintiff shall be entitled to sue the said defendant giving its different offices and addresses where the alleged cause of action had arisen against it. The defendant No. 2 is also defendant No. 1, Therefore, both should be shown and imp leaded as same defendant. To that extent, the application is allowed and the plaintiff is directed to amend its memo of parties showing British Airways Plc with its different addresses as defendant No. 1. Consequently the plaintiff is liable to amend the memo of parties and show defendant No. 1 and 2 as defendant No. 1 with different addresses and defendant Nos. 3 and 4 be also re-numbered as defendants No. 2 and 3.

17. The application is, thus, partly allowed and parties are directed to bear their own costs. Amended memo of parties be filed by the plaintiff within two weeks.