

2013 C L D 66

Lahore

Before Ch. Shahid Saeed,

NAVEED MERCHANT--Petitioner

versus

SAFDAR GONDAL and 4 others-Respondents

Civil Revision No.2644 of 2010, decided on 19th December, 2011.

Aamir Mehmood for Petitioner.

Bilal Kashmiri for Respondents.

ORDER

Application allowed

Contract Act (IX of 1872)---73---Civil Procedure Code (V of 1908), O.I, R. 10---Breach of contract--1 Suit damages and compensation---Necessary or proper party---Defendant's application for striking out his name as a defendant in the suit was dismissed by Trial Court---Validity---Plaintiff had filed suit on the basis of an oral agreement between him and the other defendant and no specific role had been mentioned in the plaint against the defendant-Main grievance of the plaintiff was against the defendant Company and its officials whereas the defendant was only an estate advisor for said Company---Defendant was not a beneficiary of the alleged oral agreement--- Compensation for breach of contract could be claimed from a party which had breached the terms of the agreement--~Person who was not a party to contract was neither necessary nor proper party in a suit for damages---High Court set aside order of Trial Court and allowed the defendant's application for striking out his name as defendant in the suit"- Revision was allowed, accordingly.

A Province of the Punjab through Secretary, Sports Government of the Punjab and another v. Messrs Qavi Engineers Pvt. Ltd. through Director and 2 others 2007 MLD 89 rel..

CH. SHAHID SAEED, J.---Brief facts of the case are that respondent No.1 filed a suit for recovery of compensation, damages and costs of Rs. 21,691,460 against the petitioner and respondents Nos.2 to 5. Petitioner filed an application under Order 1, Rule 10, C.P.C. for striking out his name from the array of pleadings on the ground that petitioner is neither a necessary nor a proper party to the suit. The said application of the petitioner was dismissed by the learned trial court vide order dated 04-06-2010. Feeling aggrieved by the said order petitioner has filed the instant civil revision.

2. Learned counsel for the petitioner contends that the order passed by the learned trial court is against law and facts and also based upon surmises and conjectures; that in whole the plaint no specific role has been ascribed to the petitioner against the respondent No.1 and only the grievance of the plaintiff is against respondent No.2 and its officials i.e. respondents Nos.3 to 5; further argued that petitioner works independently and has nothing to do with the business of the respondent 2.

3. On the other hand. learned ' counsel for the respondents argued that petitioner is a proper and necessary party in the suit because he being the estate advisor of defendant No.1 was the direct beneficiary of the agreement executed between the plaintiff and defendant No.1 and application of the petitioner under Order 1, Rule 10, C.P.C. filed by the petitioner for striking out his name from the arrays of the parties was rightly dismissed by learned trial Court.

4. After hearing the arguments of learned counsel for the parties and perusal of record I find that respondent No.1 filed a suit for recovery of compensation and damages on the basis of some oral agreement which was made between the plaintiff and defendant No. 1. No specific-role has been mentioned in the plaint against the petitioner. The main grievance of the plaintiff is against the Motorola. Company/respondent No.2 and its officials. From the perusal of plaint it reflects that petitioner was the only Estate Advisor of defendant No.1. He was not the beneficiary of the alleged oral agreement, which was made between the parties. It is settled principle of law that compensation for breach of contract can be claimed from a party to a contract, who has breached the terms- of agreement. A person who is not a party to a contract is neither necessary nor proper party in suit for damages. Reliance can be placed to the case of Province of the Punjab through Secretary, Sports Government of the Punjab and another v. Messrs Qavi Engineers Pvt. Ltd. through Director and 2 others (2007 MLD 89) Lahore. It is, therefore, I am of the considered opinion that neither the petitioner is proper nor necessary party in the suit filed by the plaintiff because he has no direct connection with the defendant No.1. He was also not the beneficiary of the alleged oral agreement as stated above.

5. For the foregoing reasons, the instant civil revision is allowed. and impugned order passed by the learned trial Court dated 04-06-2010 is set aside. The application under Order I, Rule 10, C.P.C. for striking out the name of the petitioner from the arrays of the parties is accepted.