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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Reserved on:-14.05.2025

Date of Pronouncement:-23.05.2025

Sh. Arvind Kumar Sarraf

...Petitioner

Versus

M/s Haryana Petroleum Products and another

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Samir Rathaur, Advocate
for the petitioner.

Mr. Kamal Sehgal, Advocate,
Mr. Charanji Lal, Advocate and
Mr. Ravinder Pankaj, Advocate
for respondent No.1.

SUVIR SEHGAL, J.

1. Assailing order dated 26.04.2019, Annexure P1, passed by learned Additional Civil Judge (Sr. Divn.), Faridabad, whereby an application filed under Order 1 Rule 10 (2) read with Section 151 CPC for striking out his name from the array of parties has been declined, petitioner/defendant No.2 has approached this Court by way of instant revision petition.

2. Mr. Samir Rathaur, counsel for the petitioner submits that respondent No.1/plaintiff filed a suit, Annexure P2, for recovery of Rs.31 lakhs against M/s Arcotech Ltd., respondent No.2 and arrayed the petitioner as defendant No.2. Counsel states that upon being served, suit is being contested by the defendants by filing a joint written statement,



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Annexure P3. Counsel asserts that as the suit did not disclose any cause of action against the petitioner, an application, Annexure P4, under Order 7 Rule 11 (a) CPC was filed for rejection of the plaint against him, which was declined by the Trial Court and while dismissing revision petition, this Court by order, Annexure P8, granted liberty to the petitioner to move an appropriate application. He states that an application, Annexure P9, under Order 1 Rule 10 (2) CPC was filed for striking out of the name of the petitioner from the array of the parties and after contest, the application has been illegally declined by the Trial Court vide order impugned herein. While making a reference to affidavit dated 23.04.2025 filed by the petitioner pursuant to an order passed by this Court, counsel contends that the petitioner is a Non-Executive Director of the company, respondent No.2 and he is neither a necessary nor a proper party to the suit. Reliance has been placed by him on:

(i) Tristar Consultants Versus M/s Customer Services India Pvt.

Ltd. and Anr., 2007 (23) RCR (Civil) 411;

(ii) M/s Faith Mercantile Pvt. Ltd. Versus M/s Simbhaoli Sugars

Ltd. & Ors., 2019 (256) DLT 5; and

(iii) Mukesh Hans and Anr. Versus Smt. Uma Bhasin and Ors.,

2010 SCC Online Delhi 2776.

3. Countering him, Mr. Kamal Sehgal, counsel for respondent No.1 has made a reference to the averments of the plaint as well as to the notices, Annexures R1 and R2, sent to the defendants to urge that the petitioner is a Director – cum – Chairman of company, respondent No.2



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and plays an active role in its day to day affairs. He urges that defendant No.2 had personally assured the plaintiff that the balance dues would be cleared. Reliance has been placed by him upon *Sanuj Bathla and Others Versus Manu Maheshwari and others, MANU/DE/3911/2021.*

4. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.

5. The decision of the application, Annexure A9, hinges on the adjudication of the question as to whether defendant No.2 is a necessary or property party to the suit. Two fold test recognized by the Hon'ble Supreme Court in *Kasturi Versus Iyyamperumal and others (2005) 6 SCC 733*, for determining as to who is a necessary party are:

- (i) There must be a right to some relief against such party in respect of the controversies involved in the proceedings; and
- (ii) No effective decree can be passed in absence of such a party.

6. In *Tristar Consultants case* (supra), High Court of Delhi has held that in a suit for recovery of money, only such persons can be impleaded as defendants against whom averments are made which on proof would entitle the plaintiff to a decree whether jointly or severally or in the alternative against the said persons as defendants. It has been observed that a company is a juristic person and has to act through a living human being. Decisions on behalf of the company are taken by its Board of Directors and an individual Director has no power to act on behalf of the company of which he is a Director, unless there is a specific



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resolution of the board giving specific power to him or where the articles of company confer such a power.

7. Elaborating on the subject, in **Mukesh Hans's** case (supra), it has been held as under:-

11. Indubitably, a company incorporated under the Companies Act, whether as a private limited company or a public limited company, is a juristic entity. The decisions of the Company are taken by the Board of Directors of a Company. The Company acts through its Board of Directors, and an individual Director cannot don the mantle of the Company by acting on its behalf, unless he is so authorized to act by a special resolution passed by the Board or unless the Articles of Association so warrant. It is equally well settled that a Director of a Company though he owes a fiduciary duty to the Company, he owes no contractual duty qua third parties. There are, however, two exceptions to this rule. The first is where the Director or Directors make themselves personally liable, i.e., by execution of personal guarantees, indemnities, etc. The second is where a Director induces a third party to act to his detriment by advancing a loan or money to the Company. On the third party proving such fraudulent misrepresentation, a Director may be held personally liable to the said third party. It is, however, well settled that this liability would not flow from a contract, but would flow in an action at tort, the tort being of misrepresentation and of inducing the third party to act to his detriment and to part with money.

8. In **M/s Faith Mercantile's** case (supra), while reiterating the above view, High Court of Delhi observed that personal liability of a Director would arise only where he makes a false averment regarding the



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company and induces a third party to advance loan to the company.

9. Averments of the plaint have to be examined in light of the above reproduced legal position. In para No. 2 of the plaint, plaintiff has pleaded that defendant No.2 is the Director – cum - Chairman of the company and is liable to pay its dues. In para No.3, it has been averred that the defendants have purchased industrial oil from the plaintiff and last payment was made on 30.11.2011 leaving an outstanding sum of Rs.20,55,542.88. In paras Nos.4 and 5 of the plaint allegation has been levelled that the plaintiff had been requesting the defendants to make the payment, but the defendants have been avoiding to pay the balance amount. A legal notice dated 23.01.2014, Annexure R1, was sent to both the defendants to which the respondents responded vide reply, Annexure R2, sent through their lawyer. In para No.6, it has been asserted that the defendants contacted the plaintiff and assured him that they will make the balance payment and when they failed to do so, another notice dated 01.08.2014 was served upon them.

10. There is no allegation that defendant No.2 ever gave any personal guarantee for the payment of the balance amount nor has it been averred that he extended any personal assurance. Bald assertion that the defendants had assured the plaintiff that the balance payment would be made does not make defendant No.2, who is a Director of the company, personally liable for the repayment of the dues of the company. It is not the case that defendant No.2 ever approached plaintiff for the supply of industrial oil. There is no privity of contract between plaintiff and



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defendant No.2. No document could be referred to, that would indicate that there was any direct communication between the plaintiff and defendant No.2 and he had extended any assurance, promise, undertaking or guarantee to make the balance payment. Although, legal notice, Annexure R1, has been addressed to defendant No.2, but response thereto has been given through a lawyer on behalf of the company, defendant No.1.

11. Company/defendant No.1 is a distinct and independent juristic person under the Companies Act and is endowed with special rights and privileges. Being a legal person, a company is liable for its acts and actions. The Directors of the company are not liable for the civil wrongs of the company and in the absence of any allegation of fraud or misrepresentation or any personal assurance extended by them, they cannot be made personally liable for acts undertaken by the company. The judgment in *Sanuj Bathla and Others* (supra) relied upon by counsel for respondent No.1 does not advance his case. In this case relying upon *Mukesh Hans's* case (supra), Delhi High Court has held that as there is no assertion in the plaint that the Directors had extended any contract or guarantee or had even undertaken to make payment of the loan amount on behalf of the company. No case of joint and several liability is made out and the liability, if any, is the sole liability of the company.

12. This Court in *Kundan Singh Versus Moga Transport Company (P) Ltd. and others, 1983 SCC Online P&H 851*, held that there is no provision in Companies Act or in the Industrial Disputes Act,



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which makes the Managing Director of a company personally liable for recovery of dues against the company. In *H.S. Sidana Versus Rajesh Enterprises, 1993 (77) Comp. Cas 251*, this Court came to the conclusion that where a decree for recovery of money has been passed against a company and its Managing Director, the liability to discharge the decretal amount was that of the company and not that of the Managing Director. This Court held that the Executing Court could proceed against the Managing Director of the judgment debtor company only if it came to the conclusion that the Managing Director was personally liable to discharge the decretal amount. In the light of the settled legal position, this Court unhesitatingly holds that defendant No.2 is neither a necessary nor a proper party to the suit and that the Trial Court has rejected the application without appreciating the cited judicial precedents. The approach of the Trial Court is fallacious and the impugned order cannot be sustained.

13. In view of the above discussion, revision petition is allowed. Impugned order is set aside. Application, Annexure P9, filed by the petitioner has to be acceded to and the name of petitioner/defendant No.2 is ordered to be struck off from the array of the defendants.

14. Pending application (s) is/are disposed off.

23.05.2025

Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No