



2025:DHC:1354



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 28.02.2025

+ **CM(M) 256/2025 & CM APPL. 7655/2025 INTERIM RELIEF**

PLANET CAST MEDIA SERVICES LTDPetitioner
Through: Mr. Anshu Mahajan, Advocate.

versus

CANARA BANK & ORSRespondents
Through: Mr. Ekant Luthra, Mr. Kunal Sharma, Mr. Shivang Sharma, Advocates for R-1.
Ms. Shailja Singh, Advocate for R-2.
Mr. Abhishek Singh, Ms. Ishaa Srivastava, Mr. Jai Choudhary and Mr. Pramarth Gupta, Advocates for R-3.

CORAM:-**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****RAVINDER DUDEJA, J.**

1. Learned counsel for respondent no.1 submits that he has since filed the reply but the same is not part of the digital record.
2. At this stage, learned counsel files a physical copy of the short reply. The same is taken on record.
3. The petition impugns the order dated 07.01.2025 passed by the learned District Judge, Commercial Courts-02, NDD in CS (Commercial) No. 691/2023 titled as "Canara Bank Vs. Planetcast



Media Services Limited and Others of India”.

4. Vide impugned order dated 07.01.2025, the learned trial court dismissed the application filed by the petitioner under Order 15A of the Commercial Courts Act read with Order XIV Rule 5 CPC with cost of Rs.5000/-. The said order is under challenge in the present petition.

5. Shorn off all unnecessary details, the brief facts as relevant for the purpose of the disposal of the present petition are that respondent no.1 filed a suit for recovery of Rs. 1.36 crores against the petitioner because cheques issued in its favour by respondent no.3 (plaintiff's account holder/borrower) towards their liability for the said amount was honoured by respondent no.1 due to a technical glitch despite there being no balance to cover the said amount.

6. In its written statement, petitioner took the defence that there was no privity of contract between the petitioner and respondent no.1, the suit was liable to be dismissed for mis-joinder of parties and the court was not having jurisdiction to entertain the suit.

7. Upon completion of pleadings, the learned trial court framed the following issues on 09.10.2024:

“1 Whether suit is barred under S. 2(g) read with S. 17 and 18 of the Recovery of Debts and Bankruptcy Act, 1993, in view of preliminary objection no.3 of the written statement of the defendant no.1. If so, its effect? OPD1

2. Whether the plaintiff is entitled to recover Rs.1,36,00,000/- from the defendant nos. 1 and 3? OPP

3. Whether the plaintiff is entitled to recover interest from the defendants? If Yes, then at what rate and for which period?OPP

4. Relief.”



8. Petitioner filed an application under Order XV A of the Commercial Courts Act for framing the following two additional issues:

" Whether there is any privity of contract between the plaintiff and defendant no.1? OPP D-1
Whether the suit is liable to be dismissed for misjoinder of parties?
OPP D-1"

9. The trial court took that issue no.2 already framed would presuppose findings as regards the liability of the petitioner to pay such amount to the respondent-bank or otherwise and such finding would include the decision on the plea regarding the existence or otherwise of privity of contract between the petitioner and respondent no.1. The relevant para of the impugned order dated 07.01.2025 is extracted below:

"It is thus quite evident from above that a specific issue no. 2 has already been framed regarding entitlement of plaintiff to recover Rs. 1,36,00,000/- from defendant nos. 1 and 3, while placing the initial burden of providing said issue upon the plaintiff. It goes without saying that decision of issue no. 2 would presuppose finding as regards the liability of defendant no. 1 to pay any such amount to the plaintiff bank or otherwise and such finding would include the decision on the plea regarding existence or otherwise of privity of contract between plaintiff and defendant no. 1. That being so, this Court is in agreement with the arguments advanced on behalf of plaintiff bank that no separate issue in this regard is required to be framed by this Court. For similar reasons, there is no requirement to frame any separate issue regarding the present suit entailing dismissal on the ground of misjoinder of defendant no. 1 in the present suit. The application in hand is found to be completely devoid of any merit and has not only resulted in delay in trial of the present proceedings but has also resulted in wastage of the precious time of this Court. Hence, such application needs to be handled with stern hand. Accordingly, the application is hereby dismissed with costs of Rs. 5,000/- payable by defendant no. 1 to the plaintiff bank



and receipt regarding payment of costs is directed to be placed on record within four weeks from the date of this order, failing which appropriate consequences shall follow under the law.”

10. Learned counsel for the petitioner submits that the petitioner has taken specific defence in its written statement in paras no, 1, 20, 23 and 26 that there is no privity of contract between the petitioner and respondent no.1 and the suit is bad for mis-joinder of the parties.

11. It is submitted that the trial court has to frame issues to ensure that every factual and legal proposition affirmed by one party and denied by the other party forms a distinct issue.

12. Learned counsel for respondent no.1 submits that respondent no.1 has not made any averment in the suit qua the existence of contract between the petitioner and respondent no.1. It is submitted that respondent no.1 has categorically averred the status of petitioner as that of a beneficiary of the cheques in question issued by respondent no.3 in favour of the petitioner. As such no material proposition of existence of the fact of a contract between the petitioner and respondent no.1 to clear the cheques or otherwise has been affirmed/averred by respondent no.1 in the plaint, and therefore, the parties are not at an issue qua the existence or non-existence of the contract or privity of contract.

13. The object of framing the issues is to tie down the evidence, arguments and decision to a particular question so that there may be no doubt on what the dispute is. The correct decision of the civil *lis* largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided.



14. Issues are framed for a right decision of the case with an object to pin point the real and substantial points of difference between the parties specifically and unambiguously emerging out of the pleadings.

15. The issues should be sufficiently expressive of the matter it is desired to consider.

16. On a perusal of paras 1, 20, 23 and 26 of the written statement, it is apparent that petitioner has taken the objection that there is no privity of contract between the petitioner and respondent no.1, and therefore, the suit is completely misconceived against the petitioner and is liable to be dismissed qua the petitioner for misjoinder of parties.

17. An issue can also arise by unilateral assertion of fact by a party which may not be specifically denied by the other party but may have a crucial bearing on the adjudication of the case. Therefore, in such circumstances, the court would be well within its province to frame an issue where one of the two parties asserts a fact which has a vital bearing on the outcome of the suit.

18. Issue no.2 already framed is a general issue which is more with regard to the grant of the relief as claimed with the plaint. There being specific pleadings in the written statement, in my view, both the issues proposed by the petitioner in its application under Section 16 read with Order XVA of the Commercial Courts Act are essential and are relevant for the purpose of proper adjudication of the suit pending before the trial court.



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19. For the foregoing reasons, the petition is allowed and the impugned order dated 07.01.2025 to the extent it dismisses the application of the petitioner with costs of Rs.5000/- is set aside and following two issues are accordingly framed:

" Whether there is any privity of contract between the plaintiff and defendant no.1? OPD-1

Whether the suit is liable to be dismissed for misjoinder of parties? OPD-1"

20. The petition is accordingly allowed.

RAVINDER DUDEJA, J

FEBRUARY 28, 2025/ib