

(2018) 11 DEL CK 0024

In the Delhi High Court

Case No : Civil Suit(COMM) 774 Of 2017

Amrit Jal Ventures Private Limited

APPELLANT

Vs

Ifci Venture Capital Fund Limite

RESPONDENT

Date of Decision : 01-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17
Companies Act, 2013 — Section 17

Citation : (2018) 11 DEL CK 0024

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Rahul Malhotra, P.C.Sen, Nitin Dahiya, Kaustubh Singh

Final Decision : Allowed

Judgement

JAYANT NATH, J

IA No. 10482/2018

1. This application is filed under Order 6 Rule 17 CPC for amendment of the plaint.

2. The plaintiff has filed the present suit seeking a decree of declaration declaring that all the amount due and payable by the plaintiff to the defendant

under the Corporate Loan Agreement dated 28.03.20014 have been recovered in full by the defendant. A decree of permanent injunction is also

sought restraining the defendant from transferring the securities provided by the plaintiff under the Corporate Loan Agreement dated 28.03.2014 to

Green India Venture Fund including a mandatory injunction directing the defendant to return the remaining securities to the plaintiff provided to the

defendant under the Corporate Loan Agreement. Other connected reliefs are also sought.

3. It has been pointed out in the application that after filing of the suit, the plaintiff was informed that the defendant have already sold 90% of the pledged shares i.e. 33.44 lakhs shares. Hence, the present application is filed whereby apart from other averments, the plaintiff seeks to add the relief of declaration that the sale of the said 33.44 lakhs shares of Gati Ltd by the defendant is illegal. A decree of mandatory injunction is also sought to be added to direct the defendant to purchase and restore the said shares or in the alternative, if the defendant is unable to restore the shares, the defendant may be directed to transfer the amount realised from the sale of the said shares to plaintiffs No. 2 to 6 in the proportion of their shares.

4. I have heard learned counsel for the parties.

5. Learned senior counsel appearing for the defendant has opposed the application. He has taken me through the reply which has been filed. He has also pointed out that the relief which is being sought, namely, of restoration of the shares is hit by Section 17 of the Companies Act. He further submits that the relief of refund of the security amount could have been sought for by the plaintiff at the time of filing of the suit but the plaintiff has deliberately chosen not to seek that relief only to save court fees.

6. It is clear that the plaintiff got knowledge of the sale of the said 33.44 lakhs shares only after filing of the suit. Hence, the need to seek the relief for restoration of the shares/payment of the sale proceeds to the plaintiff arose only after filing of the suit. This is being a subsequent event, in my opinion, the plaintiff is justified moving of the present application.

7. It is settled law that rule of amendment is essentially a rule of justice, equity and good conscience. The court while considering the application for amendment, should not go into the correction or falsity of the case in the amendment. Reference in this context may be had to the judgement of the Supreme Court in *Rajesh Kumar Aggarwal and Ors. vs. K.K. Modi and Ors.* AIR 2006 SC 1647.

13. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not

been followed by the High Court in the instant case.â??

8. Reference may also be had to the judgment of the Supreme Court in the case of Revajetu Builders and Developers vs. Narayanaswamy and Sons

& Ors, (2009) 10 SCC 84. The Supreme Court held as follows:-

â??63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while

allowing or rejecting the application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only

illustrative and not exhaustive.â??

9. In my opinion, the amendments which are sought to be added are necessary and appropriate for complete adjudication of the disputes between the parties. The proposed amendment is bonafide.

10. The application is allowed.

11. The amended plaint is taken on record.

12. The defendant may file its written statement within four weeks from today.