
(2019) 07 DEL CK 0453

In the Delhi High Court

Case No : Civil Suits (COMM) No. 127 Of 2017

Cargo Planners Limited

APPELLANT

Vs

Alpasso International Engineering Company & Ors

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 15A, Order 7 Rule 11, Order 7 Rule 11(d)

Citation : (2019) 07 DEL CK 0453

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Atul Agarwal, Rakesh Kr.Khare, Adarsh Tripathi, Ruchi Mishra, Anish Gupta, A.K.Singh, Adarsh Tripathi, Ashutosh Singh

Final Decision : Allowed

Judgement

Jayant Nath, J

IA Nos.10355/2019 and 103556/2019

1. IA No. 10355/2019 is filed by defendant No. 7 under Order 7 Rule 11(d) CPC for rejection of the plaint. IA No. 10356/2019 is filed under the same provisions by defendant No.6 for rejection of the plaint.

2. The present suit is filed by the plaintiff seeking recovery of a sum of Rs.7,04,30,346/- against the defendants. The case of the plaintiff is that defendant No. 3 entered into an off-shore contract agreement with Defendant No. 4 to 7 for supply of materials and installations thereof.

Defendant No. 2 was named as an Indian Agent for supporting defendant No. 4 to 7 for providing clearances, logistic and allied services. Defendant No. 1 to 3 on the basis of the aforesaid contracts approached and appointed the Plaintiff as Sub-contractor for providing the services of Custom House Agent (CHA) and other custom clearances and logistic support services. The plaintiff started providing services from July 2012 and continued the same till May 2014. The

grievance of the plaintiff is that defendant No. 1 is withholding the legitimate dues of the plaintiff which are pending since December 2013.

3. I have heard learned senior counsel for the applicants. He has strongly urged the following grounds to contend that the present plaint is to be rejected.

(i) He states that the plaintiff had issued a legal notice dated 10.11.2014 prior to institution of the suit which notice was only addressed to defendant No.2. Now suddenly, the applicants have added other defendants only for the purpose of putting pressure on the said defendants and for realizing its alleged dues.

(ii) He further states that there is no authorization in favour of the signatory to the plaint to institute proceedings against the present defendants. It is stated that the Resolution of the Board of Directors which has been filed by the plaintiff only authorizes the signatory to the plaint to institute proceedings against defendants No. 1 to 3 and not against the applicants.

(iii) It is further pleaded relying upon Order 6 Rule 15A CPC as amended for the commercial courts that the verification of the accompanying affidavit filed by the plaintiff is defective and hence, the plaint is liable to be rejected.

4. Order 7 Rule 11 CPC reads as follows:-

"11. Rejection of plaint

The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

xxx"

5. These applications are filed under Order 7 Rule 11 (d) CPC. Hence, it was for the applicants to show that the statement made in the plaint is barred by any law.

6. I may note that the settled legal position is while considering an application under Order 7 Rule 11 CPC, the averments made in the plaint and the accompanying documents are to be taken as correct. In case, the said averments are correct and a cause of action is established against the defendant, the plaint cannot be rejected under Order 7 Rule 11 CPC.

7. Reference may also be had to the judgement of this court in the case of Tilak Raj Bhagat vs. Ranjit Kaur, 159 (2009) DLT 470 wherein it was held as follows:-

"6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff."

8. A perusal of the plaint would show that in para 8 and 11 clear averments are made that defendants No. 4 to 7 appointed the plaintiff as a Sub-Contractor and the appointment of the plaintiff as a Sub-Contractor was duly approved by defendant No. 3. The plaint also states that the suit has been instituted by Sh. Shikhar Chand Jain who is the director and the authorized representative of the plaintiff Company duly authorized to sign, verify and file the suit and to take necessary steps by Board Resolution passed in the Board meeting held on 31.07.2016.

9. Based on the averments made in the plaint, the applicants have not been able to show that the claim is barred by law.

10. Further, having perused the resolution of the Board of Directors dated 31.07.2016, even if it is held for some reason that Mr.Shikhar Chand Jain did not have the authority to institute the suit against the applicants, the settled legal position is that a company can always at a later stage endorse the steps taken by the director to institute the suit. Reference in this context may be had to the judgment of the Supreme Court in Maharashtra State Mining Corpn. Vs. Sunil, s/o Pundikarao Pathak, (2006) 5 SCC 96 where the Court held as follows:-

"7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently "rectified" by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, "a subsequent ratification of an act is equivalent to a prior authority to perform such act". Therefore ratification assumes an invalid act which is retrospectively validated."

11. Clearly, the above plea cannot be a ground to dismiss the suit under Order 7 Rule 11 CPC.

12. As far as the issue that no notice having been issued to the applicants before institution of the suit is concerned, this plea is misplaced and does not in any manner support the case of the applicants.

13. Coming to the lack of verification, a perusal of the plaint would show that an affidavit in terms of the Schedule to the Order 6 Rule 15 A CPC has been filed. A statement of truth has also been filed in the format as prescribed. However, it

transpires that the para numbers in the said statement of truth have been wrongly given and do not match with those of the plaint. This is in contrast to the para numbers of the affidavit given in support of the plaint which contains the correct para numbers. The above error, at best, can be described to be a typographical error. This cannot be a ground to hold that the plaint is barred by law and is liable to be rejected under Order 7 Rule 11 (d) CPC.

14. I may also note that the applicants have failed to file their written statements despite being served way back in 2017.

15. The present applications are nothing but a dilatory act and the same are dismissed.

IA No. 10183/2019

Learned counsel for the applicant/defendant No.4 states that this application is filed under Order 7 Rule 11 (d) CPC on behalf of defendant No. 4 and has substantially the same contentions which this court has rejected above.

For the same reason, the present application is also dismissed.

IA No. 7662/2019

This application is filed by defendant No.4 seeking condonation of 23 days delay in filing the written statement. Learned counsel for the plaintiff states that he has no objection to this application.

The application is allowed and the written statement is taken on record.

O.A Nos. 111-112/2018

List for arguments on 01.11.2019.

List all pending applications also on that date.