

(2019) 11 CAL CK 0053
In the Calcutta High Court

Case No : General Application (GA) No. 2267 Of 2019, Civil Suits (CS) No. 242 Of 2018

Dredging And Desiltation Company Private Limited APPELLANT

Vs

Mackintosh Burn And Northern Express Consortium RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Commercial Courts Act, 2015 — Section 12
Code Of Civil Procedure, 1908 — Section 80

Citation : (2019) 11 CAL CK 0053

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Sakya Sen, Sankarsan Sarkar, Sunil Singhanian, Snehashis Sen, Farnaz Nasim, Arnab Chakraborty, Pragya Bhowmick, Shourjyo Mukherjee, Joydeep Guha

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

The Court :

This is an application at the behest of the plaintiff seeking amendments in the plaint.

Learned Advocate appearing for the plaintiff submits that, the amendments sought for are formal in nature. It does not change the nature and character of the suit.

The amendments sought to be incorporated are to seek dispensation of the requirement of under Section 12A of the Commercial Courts Act, 2015.

Learned Advocate appearing for the defendant nos.1 and 2 opposes the prayer for amendments. He submits that, the suit is bad in view of Section 80 of the Code of Civil Procedure, 1908. Moreover, the requirement under Section 12A of

the Act of 2015 cannot be dispensed with.

The defendant no.3 is represented.

The suit is for recovery of price of services rendered. The plaintiff by the proposed amendments seek dispensation of the requirement under Section 12A of the Act, 2015. Moreover, the proposed amendments, if allowed, will make the first three defendants liable jointly and severally instead of all the five defendants as originally prayed for.

The issue as to whether, the instant suit is bad by Section 80 of the Act of 1908 or not is kept open. The issue as to whether, the plaintiff can obtain dispensation under Section 12A of the Act of 2015 or not need not be decided at this stage, on this application. Such issue is also kept open to be decided at an appropriate stage. The third objection as to the plaintiff limiting its claim against some of the defendants instead of all the defendants is concerned, it is for the plaintiff to decide the persons from which it wants to claim the money from. The original claim was against all the five defendants. The amendments proposed by the plaintiff, if allowed will limit the claim of the plaintiff to the first three defendants. The original claim, as noted above, was against all the defendants. Therefore, the first three defendants cannot have a grievance with regard to the plaintiff limiting the claim to the first three defendants, as the original claim was against them also. The 4th and 5th defendants cannot have any grievance as the plaintiff is not making any claim against them. The proposed amendments do not change the nature and character of the suit.

In such circumstances, the amendments sought for are allowed.

There will be an order in terms of prayers (a), (b) and (c) of the Master's Summons dated September 17, 2019.

The plaintiff will file fresh writ of summons with the department for service of the writ of summons on the defendants after the amendments allowed are incorporated in the pleading.

GA No.2267 of 2019 is disposed of accordingly. Without any order as to costs.

By consent of the parties Old GA No.1299 of 2019, new GA No.2 of 2019 in CS No.242 of 2018 is treated as on the day's list and is taken up for consideration.

Learned Advocate appearing in support of the application seeks leave to withdraw such application with liberty to file afresh on the selfsame cause of action.

The defendants are represented.

In the facts of the present case, GA No.1299 of 2019 is dismissed as withdrawn with the liberty as prayed for.

Old GA No.1592 of 2019, new GA No.3 of 2019 in CS No.242 of 2018 is treated as on the day's list by consent of the parties.

This application is at the behest of the defendant nos.1 and 2 for extension of time to file written statement.

Learned Advocate appearing for the defendant nos.1 and 2 submits that the written statement is ready. He submits that, since the Court was pleased to allow the application for amendment, he submits that, it would be appropriate that the defendants be allowed to file a composite written statement after the writ of summons of the amended plaint is served upon the defendants.

The prayer made on behalf of the defendant nos.1 and 2 being reasonable is accepted.

GA No.1592 of 2019 is disposed of.

The defendants are at liberty to file written statement within a fortnight from the date of receipt of service of the writ of summons of the amended plaint.