**(2017) 01 DEL CK 0062**

**In the Delhi High Court**

**Case No :** CS(OS) No. 1723 of 2011

Kiran Shoes Manufacturers — APPELLANT

Vs

M/s. Welcome Shoes Pvt. Ltd. — RESPONDENT

**Date of Decision :** 18-01-2017

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 25 Rule 1

**Citation :** (2017) 173 AIC 841 : (2017) 2 CivCC 56 : (2017) 237 DLT 241

**Hon'ble Judges :** Mr. Vibhu Bakhru, J.

**Bench :** Single Bench

**Advocate :** Mr. N.K. Kantawala and Mr. P. Sharma, Advocates, for the Defendants; Mr. Pranay Sarkar, Advocate, for the Plaintiff

**Final Decision :** Disposed off

## Judgement

Vibhu Bakhru, J. - The disputes involved in the present suit fall under the definition of ''Commercial Dispute'' as defined under Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Accordingly, the Registry is directed to re-number the present suit as CS (Commercial) and while allotting the new number, the Registry shall also indicate on the file, the old registration number of the case.

IA No.11400/2016

2. This is an application filed on behalf of the plaintiff under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereafter ''the CPC'') for amendment of the plaint. Mr. N.K. Kantawala, learned counsel appearing for the defendants fairly states that he does not oppose the application for amendment of the plaint, albeit reserving the right to oppose the averments made therein.

3. Accordingly, the application is allowed. The amended plaint is taken on record.

4. Application is disposed of.

CS(OS) No. 1723/2011

5. The defendants may file their written statement within a period of four weeks from today. Replication, if any, be filed within a period of two weeks thereafter.

6. List before the Joint Registrar for admission/denial of the documents on 08.02.2017.

IA No.16398/2012

7. This is an application filed on behalf of the defendants, inter alia praying that the plaintiff be directed to secure the cost by depositing a sum of Rs. 25,00,000/- with the Registrar General of this court.

8. Mr. Kantawala has drawn the attention of this court to Order 25, Rule 1 of the CPC which reads as under:-

"1. When security for costs may be required from plaintiff.- (1) At any stage of a suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant:

Provided that such an order shall be made in all cases in which it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of India and that such plaintiff does not possess or that no one of such plaintiffs possesses any sufficient immovable property within India other than the property in suit."

9. Mr. Kantawala further submits that in terms of the proviso to Order 25, Rule 1 of the CPC, as the plaintiff does not have any immovable assets in India, it is mandatorily required to secure the defendants as to the costs incurred or likely to be incurred. He also referred to the order dated 21.12.2011 passed by this court in IA No.12462/2008 in CS(OS) No.2031/2008 captioned Kiran Shoes Manufacturers v. Shri Sandeep Goel and Ors. wherein the plaintiff had agreed to furnish appropriate security to the extent of Rs.5,00,000/-.

10. Mr. Sarkar, the learned counsel for the plaintiff disputes the above proposition. He referred to the decision of a coordinate bench of this court in Alberto-Culver USA Inc v. Nexus Health & Home Care (P) Ltd.: 2009 (41) PTC 197 (Del.) wherein this court had held that it is not mandatory that in every case, the court must direct the plaintiff to furnish security for costs.

11. The plaintiff is a foreign entity and it is admitted that plaintiff does not have any immovable assets in this country. Although it is stated that the plaintiff has a large turnover in India, it is not disputed that the plaintiff does not have a bank account in India. In these circumstances, the apprehension of the defendants that it would be difficult for the defendants to recover the costs, if any, that may be awarded in its favour is merited.

12. The question whether the proviso to Order 25, Rule 1 of the CPC is mandatory or not must be considered in the context of the express language and

the object of the said proviso. The rationale of the said proviso is clearly to ensure that the defendant is not put to any inordinate inconvenience of enforcing the award of costs in another jurisdiction. The use of the word shall also indicates that the proviso is mandatory.

13. The decision of this court in Alberto-Culver USA Inc (supra) does not address the language of the proviso to Order 25, Rule 1 of the CPC; apparently, the decision turns on the language of the main provision itself.

Undisputedly, it is not mandatory to direct that the plaintiff provide security for costs in each and every case. On the contrary, the court is required to record reasons in writing if the court feels that such an order is necessary.

However, the proviso is couched in affirmative terms. It is applicable only in cases where the plaintiff(s) are overseas entities and do not possess sufficient immovable assets in India. If these two conditions are satisfied then the defendant would have to be secured for the costs that it may incur.

This is also the view expressed by the Coordinate Bench of this court in S.A. Brothers and Co. and Anr. v. John Bartholomow & Son Ltd. & Others: 2000 (88) DLT 425. The said decision was also not noticed by this court in Alberto-Culver USA Inc (supra).

14. In these circumstances, the plaintiff is directed to provide security for costs to the extent of Rs. 5,00,000/- to the satisfaction of the Registrar General of this court within a period of four weeks.

15. The application is disposed of.

 