

(2011) 04 DEL CK 0215
In the Delhi High Court
Case No : CS (OS) No. 1251 of 2007

Montblanc Simplo-Gmbh

APPELLANT

Vs

New Delhi Stationery Mart and Another

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11

Citation : (2011) 04 DEL CK 0215

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Niki Kantawala, Neel Mason, Vrinda Sharma and Sankalp Dalal, for the Appellant; Shyam Moorjani and Anil Kr. Sablawat for D 2, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.

IA No. 13607/2011 (Under Order 6, Rule 17 CPC)

1. This is an application filed by Defendant No. 2 for amendment of written statement. A large number of amendments are proposed to be made by the applicant in various paragraphs of the written statement, besides inserting certain additional paragraphs.

2. The application has been opposed by the Plaintiff on the ground that some of the proposed amendments are in conflict with the order of the Supreme Court dated 20th September 2010 and the proposed amendments are not necessary for complete and effective adjudication of controversy and issue involved in the present suit.

3. IA No. 3419/2009 was filed by Defendant No. 2 under Order 7 Rule 11 of CPC for rejection of the plaint. The application was dismissed vide order dated 13th August 2009. A Review was, thereafter, filed by Defendant No. 2, which also came to be dismissed on 10th August 2010. A SLP was filed by Defendant No. 2

in Supreme Court, which was disposed of vide order dated 20th September 2010. While disposing of the petition, Supreme Court inter alia directed as under:

Learned Counsel of the Petitioner submitted that he urged important grounds in his application under Order VII Rule 11 but many of the grounds have not been dealt with by the High Court and the trial court. In our opinion, if any ground has not been dealt with by the High Court and the trial court the Petitioner is at liberty to raise those grounds in his written statement but he will not be permitted to raise any ground which has been dealt with by High Court and the trial court.

4. It would be seen from a perusal of the above referred order that any ground taken in IA 3419/2009 if dealt with by this Court, cannot be permitted to be raised by the applicant/Defendant No. 2. Therefore, the proposed amendments, to the extent they pertain to the grounds which were dealt with by this Court vide order dated 13th August 2009, cannot be allowed.

5. While dismissing IA 3419/2009, this Court in para 7 of the order observed as under:

After considering all the facts and submissions made by the counsel of the parties, I am of the view that, the issue of dual capacity as raised by the applicants, is mere a technical irregularity, which does not affect the root cause of the issue as raised in the original suit, it would not cause any prejudice to the non-applicants if allowed to get cured. There is no legal bar to an advocate being appointed as a constituted attorney by a party for the purpose of a case.

6. In para 10 of the application, the Court inter alia held as under:

Substantial rights should not be allowed to be stultify and scuttle on account of a procedural irregularity which is curable. This technical irregularity is not fatal to the proceedings and if is allowed it would cause further delay in the matter.

7. The case of the applicant/Defendant No. 2 is that M/s. DSK Legal were the Advocates and Solicitors of the Plaintiff company and a legal notice in respect of the present matter was sent by them to the Defendant through Mr. Abhishek Malhotra, Advocate, who is a part of DSK Legal. This is also their case that Ms. Gopika Pant, Advocate, who is alleged to be attorney of the Plaintiff, was also a partner of DSK Legal and, therefore, there being a conflict of interest, she could not have acted in dual capacity i.e. as attorney as well as the counsel of the Plaintiff company.

8. Since, this Court was of the view that the issue of dual capacity, as raised by the applicants, was a mere technical irregularity, which does not affect the root cause of the issue and there was no legal bar to an advocate being appointed as a constituted attorney by a party for the purpose of a case and was further of the view that this technical irregularity is not fatal to the proceedings, it is not open to the applicant/Defendant No. 2 to again rake up the issue of dual capacity by way of proposed amendment. If allowed to be raised, this would be in conflict

with the order passed by the Supreme Court on 20th September 2010.

9. Mr. Moorjani states that the order of the Supreme Court pertains to only an application under Order 7 Rule 11 of CPC for rejection of the plaint and, therefore, there can be no bar to his raising same plea in the written statement, the same being otherwise permissible in law. I need not go into this aspect of the matter for the simple reason that the Supreme Court, while passing the order dated 20th September 2010, expressly directed that the grounds which had been dealt with by this Court will not be allowed to be raised.

10. A perusal of the application under consideration would show that proposed paras 6(h) 6(i) and the following part of proposed para 1(d) refer to the ground of dual capacity which has already been dealt with and rejected by this Court vide order dated 13th August 2009:

It is also imperative to mention herein that in the Appeal, a caveat application No. 157 of 2007 was filed by DSK, Legal in which Ms. Gopika Pant as client has executed 1st vakalatnama on 23rd May, 2008 in favour of DSK Legal appointing inter alia herself as advocate along with other Advocates i.e., Gopika Pant, Balbir Singh Mastan, Abhishek Malhotra, Shweta Singh and Manu T.R. Advocates of DSL Legal, 40 Aradhna, Chankyapur, R.K. Puram, Sector-13, New Delhi-110066. Said Caveat Application was served upon 2nd Defendant through registered A.D. reference No. DSK/DEL/(HC-1) of dated 23rd May 2008. At this juncture Ms. Gopika Pant herself represented as client by concealing the true facts and also appointed herself among others as an Advocate to represent the instant case, from this it is apparent that DSK Legal and its partners have been representing and acting both as "Advocate/s" as well as

"client" simultaneously in the same cause" which is not permissible under law. Hence, the suit is liable to be dismissed on this count alone.

These amendments are declined.

11. As regards rest of the proposed amendments, the law of amendment being rather liberal in nature and legal proposition being with an amendment should ordinarily be allowed unless it is likely to prejudice the opposite party or is likely to take away a vested right which has accrued to the opposite party provided the opposite party can be compensated in terms of cost. Errors or mistakes, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or Written Statement. If there is no undue delay, no inconsistent cause of action is introduced and no vested interest or accrued legal right is affected and the application for amendment is not mala fide or will not prejudice the opposite party, the amendment should ordinarily be allowed. The trial in this case has not begun as yet since the order of this Court directing appointment of a Local Commissioner for recoding evidence has been stayed by Supreme Court. Hence, the proviso to Order 6 Rule 17 of the CPC does not apply. The proposed amendment is, therefore, allowed, subject to payment of Rs. 25,000/- as cost.

12. Written statement in terms of this order be filed within four weeks. Replication can be filed within four weeks, thereafter. List for framing of additional issue, if any, on 18th October 2011.

IA No. 17797/2010 (Under Order 14, Rule 5 CPC)

Renotify on the date fixed above.