(2017) 11 DEL CK 0144

In the Delhi High Court

Case No : Civil Suit (COMM) No. 421, 424 Of 2016

M/S Vysya Leasing & Finance Ltd APPELLANT

Vs

M/S Amrit Lal Bajaj & Co. & Anr RESPONDENT

Date of Decision : 28-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 35, 50, 52, Order 22 Rule 10, Order 7 Rule 11, Order 6 Rule 17
Code Of Criminal Procedure, 1973 — Section 340
Evidence Act, 1872 — Section 74
Companies Act, 2013 — Section 18, 18(3)

Citation : (2017) 11 DEL CK 0144

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Vidit Gupta, Harleen Singh, Manu Nayar, Vishwas Sethi, Kunal Soni, Radhika Arora, Meenakshi Bhatia

Judgement

Valmiki J. Mehta, J

(I) I.A. No.15039/2016 (under Order VI Rule 17 CPC) filed by legal heir no.1 of deceased defendant no.2 in CS(COMM) No.421/2016

I.A. No.15037/2016 (under Order VI Rule 17 CPC) filed by legal heir no.1 of deceased defendant no.2 in CS(COMM) No.424/2016

(II) I.A. Nos.12315/2016 & 10097/2017 (under Order XI Rule 12 and 14 CPC read with Section 151 CPC) filed by legal heir of

deceased defendant no.2 in CS(COMM) No.421/2016 I.A. Nos.12435/2016 & 10093/2017 (under Order XI Rule 12 and 14 CPC read

with Section 151 CPC) filed by legal heir of deceased defendant no.2 in CS(COMM) No.424/2016

(III) I.A. No.10098/2017 (under Section 30 CPC read with Order XVI Rule 14 CPC) by legal heir no.1 of deceased defendant no.2 in

CS(COMM) No.421/2016 I.A. No.10094/2017 (under Section 30 CPC read with Order 16 Rule 14 CPC) by legal heir no.1 of deceased

defendant no.2 in CS(COMM) No.424/2016

(IV) I.A. No.2371/2017 (under Section 151 CPC) by plaintiff in CS(COMM) No.421/2016 I.A. No.2373/2017 (under Section 151 CPC)

by plaintiff in CS(COMM) No.424/2016

1. By this order, the aforesaid applications at SI Nos. (I) to (III) filed by one of the defendants in the suit are being disposed of. The applications filed

by plaintiff at SI No. (IV) are also being disposed of. Defendants in the suit are legal heirs of the original defendant no.2/Sh. Rajesh Bajaj - a stock

broker. Defendant no.1 in the suit was the sole proprietorship concern of Sh. Rajesh Bajaj namely M/s Amrit Lal Bajaj & Co. Sh. Rajesh Bajaj was

sued as defendant no.2 in the suit. On the death of Sh. Rajesh Bajaj, his legal heirs have been substituted and who are the present defendants in the

suit. The applications at SI Nos. (I) to (III) are filed by Mrs. Sapna Bajaj, the wife of late Sh. Rajesh Bajaj/defendant no.2 and who is impleaded as

legal heir no.1 of the deceased Sh. Rajesh Bajaj.

2. CS(COMM) No.421/2016 is a suit for recovery of Rs.14 lacs along with interest. CS(COMM) No.424/2016 is a suit for recovery of Rs.1.52 crores

along with interest. The original numbers of the suits were CS(OS) Nos.549/2007 and 2010/1997. The plaintiff in both the suits is the same namely

M/s Vysya Leasing & Finance Ltd. By the suits, recovery of the amounts are sought on account of the plaintiff/company having sold certain shares of

companies under a package deal to the original defendant no.2/Sh. Rajesh Bajaj. For the sale price, the defendant no.2/Sh. Rajesh Bajaj had issued

cheques which were dishonoured, and hence the subject suits came to be filed.

3. Both the suits were filed way back in the year 1997 with CS(OS) No.549/2007 being filed in District Court but was called for decision to this Court

by consolidating the same with the suit being CS(OS)No.2010/1997 i.e new CS(COMM) No.424/2016. Numbering of the suits given in this Court

earlier have changed on account of the suits being commercial matters and therefore on passing of Commercial Courts, Commercial Division and

Commercial Appellate Division of High Courts Act, 2015 fresh numberings were given to these two suits by categorizing the suits as commercial

matters.

4. So far as CS(COMM) No.424/2016 is concerned, the cheque which was issued by Sh. Rajesh Bajaj was cheque no. 279628 dated 1.9.1994 for the

amount of Rs.1.10 crores. As regards CS (COMM) No.421/2016 the cheque which was issued was cheque no. 279649 dated 23.9.1994 for Rs 10

lacs. Both the cheques were drawn on Citi Bank, New Delhi.

5. As per the written statement filed by Sh. Rajesh Bajaj in both the suits, the main defence which was taken was that the subject cheques were given

in blank to the plaintiff only as collateral security and that in fact the plaintiff was not the owner of the subject shares which were said to be sold to

defendant no.2/Sh. Rajesh Bajaj. It was also pleaded that the suits are not maintainable because it was when the ticket of Sh. Rajesh Bajaj/stock

broker was sold of the Delhi Stock Exchange, it was then that the amounts of the suits had to be recovered.

6. The following issues are framed in both the suits:-

â??1. Whether the dis-honoured cheques forming the basis of each suit were issued by the defendant to the plaintiff for consideration pleaded? OPP

2. Whether the agreement, in consideration of which the plaintiff claims that the cheques were issued is illegal and barred by law and if so to what

effect? OPD

3. Whether the cheques were given in blank by the defendant to the plaintiff and by way of security only and were not to be used? OPD

4. Whether the plaintiffs are stopped from suing for the reason of having not made their claims at the time of sale by the defendant of its ticket of the

stock exchange? OPD

5. To what amount, if any, are the plaintiffs in each suit entitled to? OPP

6. If the plaintiffs are found entitled to any amount, whether the plaintiffs are entitled to interest thereon and if so at what rate and for what period?

OPD

7. Relief.â??

I note that issues in both the suits are identical.

7. The applications which are being disposed of by this order are connected to each other because by the applications seeking amendment of the

written statement one of the issues now sought to be added is that the plaintiff/ company by the name of M/s. Vysya Leasing and Finance Ltd did not exist when the subject cheques were issued in September, 1994 and therefore the defendants were to plead that the cheques could not have been

towards the liability of the plaintiff/company which by its name as stated in the plaint did not exist in September, 1994 and that therefore cheques

which have been issued in the name of the plaintiff/company in September, 1994 are clearly a fraud upon the defendants. The applications filed for

production of the documents or for preserving of the documents by the defendants are the documents to substantiate the aforesaid amendment which

is sought in the written statement. The applications which are filed by the plaintiff/company are for changing of the name of the plaintiff/company

from M/s Vysya Leasing & Finance Ltd to M/s KMG Leasing and Advances Ltd., and which is a mere change of name.

8. At the outset, it is required to be noted that the applications which have been filed by the defendants have been filed after evidence of both the

parties have been completed and suit was fixed in the category of â??Finals? for final arguments.

9. By the amendment applications, the defendants seek to add the following paras in the written statement:-

â??10. That further during the pendency of the present suit, the plaintiff company ceased to exist with effect from 26.2.2002 and a new company had

been incorporated by the name of KMG Leasing and Advances Ltd. that the plaintiff examined himself as a witness on 17.3.2011 but did not disclose

about the incorporation of new company instead of the plaintiff deposed upon the basis of resolutions passed by M/s Vysya Leasing and Finance

Limited and not by the new company i.e. KMG Leasing and Advance Ltd. the plaintiff has intentionally played a fraud upon this Hon?ble Court by

concealing material information. That further during the pendency of the present suit, the plaintiff company cease to exist with effect from 26.2.2002

and a new company had been incorporated by the name of KMG Leasing and Advances Ltd. that the plaintiff examined himself as a witness on

17.3.2011 but did not disclose about the incorporation of new company instead of the plaintiff deposed upon the basis of resolutions passed by M/s

Vyasa Leasing And finance limited and not by the new company i.e. KMG Leasing and Advance Ltd. the plaintiff has intentionally played a fraud

upon this Hon?ble Court by concealing material information. When the evidence was recorded of the plaintiff on 17.3.2011, the plaintiff company which was not in existence but this material information was concealed by the plaintiff till date even after conclusion of the evidence of the parties.

11. That the plaintiff company was not in existence at the time of alleged cause of action which relates to Sept 1994 as reflected in para 35 of the

plaint. The plaintiff company M/s Vyasa Leasing and Finance Ltd came into existence in 26.8.1996 as per in incorporation certificate dt. 26.8.1996

issued by a Registrar of Companies. That on the said ground itself the plaint is liable to be rejected under order 7 rule 11 CPC. Plaintiff and its

directors are liable to be prosecuted under section 340 Cr.P.C.

12. That the legal heirs of deceased defendant no.2 are not liable to pay the alleged suit claim and in terms of section 50 and 52 CPC.â??

10. The first amendment which is sought by the defendants is that the cheques issued are a fraud upon the defendants and in fact the subject cheques

could not have been issued in the name of the plaintiff/company because the plaintiff/company called as M/s Vysya Leasing and Finance Ltd did not

exist in September, 1994. To buttress this argument defendants have relied upon the incorporation certificate in the name of M/s Vysya Leasing and

Finance Ltd which is of the year 1996. It is therefore argued that if M/s Vysya Leasing and Finance Ltd, i.e the plaintiff/company, came into

existence only in the year 1996 whereas the earlier name of the plaintiff/ company was M/s Vysya Leasing Limited, therefore there did not arise the

issue of giving any cheques by the original defendant no.2/Sh. Rajesh Bajaj in the name of a company M/s Vysya Leasing and Finance Ltd and by

which name the plaintiff/company did not at all exist in September, 1994 when the subject cheques were issued. Defendants also have relied upon

other documents being the bank account of the M/s Vysya Leasing and Finance Ltd to show that this bank account of the plaintiff/company shown as

inoperative does not show any entries after the year 1994. It is also prayed that the documents with the ROC in this regard be preserved because the

plaintiff/company is playing hanky panky and manipulating the records of ROC with regard to change of name. In my opinion the first amendment as

prayed for is liable to be rejected for various reasons as stated hereinunder.

11.(i) The first reason for rejecting the first amendment prayed is that the defence which is now sought to be added of the name of the

plaintiff/company M/s Vysya Leasing and Finance Ltd not existing by this name in

September, 1994 is concerned, and consequently of the subject cheques issued being therefore proved to be in blank and also a fraud upon the defendants, this defence in fact ought to have been taken by the original defendant no.2/Sh. Rajesh Bajaj. In the written statement filed by Sh. Rajesh Bajaj, and which would be deemed to be adopted by his legal heirs who are the present defendants, Sh. Rajesh Bajaj himself never took up this defence. Since Sh. Rajesh Bajaj who issued the cheques under his signatures did not raise this defence, then it was obviously because Sh. Rajesh Bajaj had no quarrel with respect to the existence of the plaintiff/company by its name of M/s Vysya Leasing and Finance Ltd in September, 1994. Once Sh. Rajesh Bajaj had no objection with respect to the name of the plaintiff/company being M/s Vysya Leasing and Finance Ltd in September, 1994 then his legal heirs being the present defendants who have stepped into the shoes of Sh. Rajesh Bajaj cannot now seek to raise this objection that the plaintiff/company by its name of M/s Vysya Leasing and Finance Ltd was not existing as on September, 1994. For this first reason the amendment as prayed for is liable to be and is accordingly rejected.

(ii) The second reason for rejecting of the amendment as prayed for is that the plaintiff/company had shown that change of name from M/s Vysya Leasing Ltd to M/s Vysya Leasing and Finance Ltd took place on account of a letter dated 1.12.1988 issued by the Government of India, Department of Company Affairs stating that name of M/s Vysya Leasing Ltd is very similar to another company already registered of M/s Vysya Bank Leasing Ltd and therefore plaintiff/company must change its name. Plaintiff/company accordingly passed a resolution dated 1.12.1990 to change its name from M/s Vysya Leasing Ltd to M/s Vysya Leasing and Finance Ltd and which was acknowledged by the Department of Company Affairs vide its letter dated 30.10.1996. On account of the resolution dated 1.12.1990 passed by the plaintiff/company of change of name to M/s Vysya Leasing and Finance Ltd, and which procedural request was already forwarded to the necessary statutory authorities, therefore the plaintiff/company in the meanwhile in its records already had changed its name from M/s Vysya Leasing Limited to M/s Vysya Leasing and Finance Ltd. The name of the bank account was also got changed from M/s Vysya Leasing Ltd to M/s Vysya Leasing and Finance Ltd. Even the balance sheets and other documents of the plaintiff/company were drawn up after the year 1991 in the name of M/s Vysya Leasing and Finance Ltd. Therefore as on 1994

though a formal change of name by a fresh incorporation certificate was not available to the plaintiff/company, and which became available only

subsequently in the year 1996, however, since the plaintiff/company had already changed its name by its resolution of the year 1990 to M/s Vysya

Leasing and Finance Ltd, it was therefore that the defendant no.2/Sh. Rajesh Bajaj had issued the cheques in the name of M/s Vysya Leasing and

Finance Ltd. Though, courts do not ordinarily go into merits of the issues while deciding an application under Order VI Rule 17 CPC, however, this is

not a categorical rule because in certain cases in order to decide whether the application for amendment is bonafide or malafide and therefore

whether it should be allowed or not, courts do go into the merits of the amendment which is sought, more so when the amendment sought if allowed

would have the effect of the suit of the year 1997, i.e 20 years old, to be put back in clock by around 20 years, and that too for a plea which was not

taken up by the original defendant no.2/Sh. Rajesh Bajaj. It is noted that neither Sh. Rajesh Bajaj nor the existing defendants being his legal heirs do

not deny that the subject cheques do bear the signatures of Sh. Rajesh Bajaj. Therefore, in my opinion, the amendment which is now prayed for by the

defendants of the plaintiff/company not existing by its name of M/s Vysya Leasing and Finance Ltd in September, 1994 is only a technical argument

and the same is also a factually incorrect position as stated above, and therefore, for this second reason also the amendment as prayed for is liable to

be rejected.

(iii) The third reason for rejecting of the amendment, and facts with respect to which have already been stated above, are that after evidence of the

parties has been concluded and at the stage of final arguments amendment cannot be allowed especially when this amendment is in fact malafidely

sought only and only to delay the suits for recoveries which have been filed by the plaintiff/company.

Malafide amendments cannot be allowed, and more so as stated above because the original defendant no.2/Sh. Rajesh Bajaj who was the correct and

the best person to take up this defence did not take up such a defence and therefore had no grievance or disputes with respect to the subject cheques of September, 1994 being issued wrongly in the name of the plaintiff/company. Also it is noted that the subject suits are commercial suits and as per

the Statute governing the same, the parties have to adhere to strict timelines by which disposal of the suit is not to be delayed.

(iv) For all the aforesaid reasons the first amendment as prayed for by the defendants is liable to be and is accordingly rejected.

12. Since this first prayer is rejected accordingly, the I.A. No.10098/2017 in CS(COMM) No.421/2016 and I.A. No.10094/2017 in CS(COMM)

No.424/2016 are also dismissed because these IAs are in substance only in furtherance of amendment which is prayed for with respect to preserving

of records of the plaintiff/company with the requisite statutory authorities.

13. The second amendment which is sought for by the defendants is that it has come on record that the name of the plaintiff/company has now in fact

changed from M/s Vysya Leasing and Finance Ltd to M/s KMG Leasing and Advances Ltd and since this fact was not suo moto brought to the

notice of the Court by the plaintiff itself, therefore for concealing this information the suit was liable to be dismissed. In response, the plaintiff has filed

the applications being I.A. No.2371/2017 in CS(COMM) No.421/2016 and I.A. No.2373/2017 in CS(COMM) No.424/2016 for bringing on record the

factum of the change of name of the plaintiff/company from M/s Vysya Leasing and Finance Ltd to M/s KMG Leasing and Advances Ltd. Counsel

for the defendants have argued that the applications being I.As of the plaintiff/ company should not be allowed because in fact the provision of Order

XXII Rule 10 CPC applies, however, this argument of the defendants is a completely misconceived argument because Order XXII Rule 10 CPC

applies when the existing party to the suit transfers its interest in the subject matter of the suit to another party and which another party thereafter

would come on record under Order XXII Rule 10 CPC. Order XXII Rule 10 CPC however does not apply when there is a mere change of the name

of a party to a suit and which does not have the effect of transferring of interest from one entity/person to another entity/person. The certificate of

incorporation of M/s KMG Leasing and Advances Ltd being the public document as per Section 74 of the Indian Evidence Act, 1872 therefore the

plaintiff is allowed to file and place on record the fresh certificate of incorporation showing change of name of plaintiff from M/s Vysya Leasing and

Finance Ltd to M/s KMG Leasing and Advances Ltd and thus IA Nos.2373/2017 and 2371/2017 are allowed. That the change of name obviously will

not result in the company under the new name not continuing to be liable for the rights and liabilities of the company under the old name because a

mere change of name only is a change of name with no other consequential legal effect. An indication of this position in law is given in Section 18(3)

of the Companies Act, 2013, which provides that even in case of conversion of a company registered under one class to another class on the change

of registration of a company, such a change of registration would not affect the debts, liabilities, obligations or contracts incurred or entered into on

behalf of the company before the conversion and such debts, liabilities, etc are enforced as if the registration had not been done. Therefore, if there is

a change of registration of a company, and effectively a new company under the new registration number comes into existence by virtue of Section 18

of the Companies Act, and in which case because of Sub-Section (3) of Section 18 of the Companies Act the debts, liabilities, etc continue with

respect to the newly converted company then surely merely because of a change of name of a company no adverse consequence would take place

upon or by the company whose name is changed. This argument of the defendants is also therefore rejected.

14. The next argument urged on behalf of the defendants was by placing reliance upon Sections 50 and 52 CPC that the legal heirs have not inherited

any assets from the deceased Sh. Rajesh Bajaj and are therefore are not liable. This argument is also misconceived because this argument is not

available at this stage of the suit and till the decree of the suit. This argument will only be available at the later stage of execution proceedings i.e in

case a money decree is passed and is sought to be executed against the legal heirs of original defendant no.2/Sh. Rajesh Bajaj and who are the

present defendants. In order to understand this aspect an example is given that it is possible that in certain cases defendants may not during the

pendency of the suit be owners of a property which has devolved upon them from the deceased defendant, however there may be many instances

where a devolution can take place upon the legal heirs till the final disposal of the suit and in fact thereafter during the period of twelve years of the

limitation period for execution of the decree, and in such cases of devolution after passing of the decree, the decree can be executed against the property which devolves upon the legal heirs of the deceased defendant pendente lite and for twelve years after passing of the decree. Therefore the

defence of Sections 50 and 52 CPC cannot be taken till the disposal of the suit and will be only available to the defendants at the stage of execution.

This argument of the defendants is also therefore rejected.

15. It is therefore seen that these applications filed by the legal heirs of the deceased defendant are an abuse of process of law. These applications

have been filed after completion of evidence and at the stage of final arguments in the suit only to delay the disposal of the suits. It is already noted

above that these applications could have been filed in fact more particularly by the husband of the present defendant no.2 and who was the original

defendant no.2. These are commercial suits. In commercial suits Courts have now been empowered to send a very strict message with respect to the

filing of frivolous applications. As per Section 35 CPC applicable to the Commercial Courts, Commercial Division and Commercial Appellate Division

of High Courts Act, 2015 for imposition of costs, Court is entitled to see the frivolous nature of the applications as also the fees incurred being legal

fees towards the Advocates or any other expenses for the proceedings. Accordingly, the applications filed by the defendants are dismissed with costs

of Rs.1,10,000/- in each of the suits. Costs be paid within six weeks from today.