

(2009) 01 DEL CK 0002

In the Delhi High Court

Case No : IA No. 1650 of 2008 in CS (OS) No. 2247 of 1991

National Small Industries Corpn. Ltd.

APPELLANT

Vs

Gaajra International

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0002

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sanat Kumar, for the Appellant; S.K. Kumar and K.B. Soni, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By this order, I shall dispose of I.A. No. 1650/08 filed by defendant under Order VI Rule 17 read with Section 151 of the CPC, 1908 seeking amendment of the written statement.

2. The plaintiff has filed a suit for recovery of Rs. 17,01,672.20 against the defendant towards arrears of instalments under the Hire-Purchase agreement of the machinery.

3. The brief facts are that by order dated 1st March, 2007 Joint Registrar of this Court had rejected the IPA filed by the defendant under Order XXXIII Rule 5 (f) CPC while coming to the conclusion that the defendant has failed to prove that he was either an indigent person or has failed to prosecute certain claims pleaded in the counter claim which are prima facie time barred.

4. Against this order, the defendant filed an appeal under Rule 4 Chapter XI of Delhi High Court (Original Side) Rules, 1967 being O.A. No. 3/2007. The said appeal was listed before this Court on 18th September, 2007 when a statement was made by the defendant to the effect that the counter claim in its present form shall be withdrawn by the defendant and appropriate application in this regard would be filed.

5. Thereafter, the defendant filed the present application under Order VI Rule 17 read with Section 151 CPC. In Para No. 3 of the application, the defendant made a statement that in view of the statement, made in O.A. No. 3/2007, the defendant wishes to withdraw the counter claim. By virtue of the present application, the defendant wishes to amend the written statement by making the necessary amendment with regard to the expenses incurred in repairing of machines received in damaged conditions during the 1984 riots and other expenses, details of which are mentioned in Para 31 of the proposed amended written statement. The proposed amendment sought for is to add necessary additional averment to the original written statement.

6. The plaintiff filed a reply to this application and, inter alia, contended that on the one hand by way of the present application, the defendant seeks to withdraw their counter claim initially raised and on the other hand by way of the same application the defendants sought to raise fresh counter claim. It is further contended that by way of the proposed amendment, the defendant is trying to set up entirely a new case which will change the nature of the suit and is not permitted in law and, therefore, the application is not maintainable and is liable to be dismissed.

7. I have heard learned Counsel for the parties and have considered the pleadings in the matter.

8. In Para 31 of the proposed written statement, the defendant has given the details of the amount spent or paid for the repairs and are claiming a sum of Rs. 22,92,500/- from the plaintiff because of its lien over the machinery, the details of which are as under:

(i) Rs. 4,30,000/- : Paid Earnest Money as an advance.

(ii) Rs. 5,09,000/-: Spent on the repair of the machine damaged during the transport from German to Gurgaon vide Invoices submitted by the supplier to the plaintiff. Out of the total sum of Rs. 22,84,264.19 spent on the repair, adjustment and indigenous parts, installed in the machine by the defendant during riots in 1984 in which the machine was damaged, a sum of Rs. 11,33,904/- was received by the defendant leaving the balance of Rs. 11,50,360/-.

(iii) Rs. 2,03,148.00 : Spent on the repair of the machine damaged, hydraulic part, out the machine was not insured by the plaintiff.

(iv) Rs. 11,50,360/- : Due.

9. As regards the details mentioned in item No. (i) to (iii) are concerned, the said averments are already available in the original written statement on record. As regards item No. (iv) for which the defendant sought amendment for claiming repairs of the machinery from the plaintiff, the defendant has averred as under:

...Then, unfortunately 1984 riots took place and the machine was damaged and

on account of the failure of the plaintiff to get a insurance policy issued, the damages had to repaired at the cost of Rs. 22,84,264.19 paisa payable by the defendant. The plaintiff reimbursed only Rs. 11,33,904/- and the balance amount of Rs. 11,50,360.19 is recoverable from the plaintiff. After repair when attempt was made to run the machine, the hydraulic parts of the machine were damaged and because of the neglect of the plaintiff having again not paid insurance premium although charged from the defendants, defendants spent on behalf of the plaintiff a sum of Rs. 2,03,148/- on the repair of the machine. In this manner, the total amount claimed by the defendants comes to Rs. 22,92,508.19 paisa on which the advalorem Court fees is paid towards the counter claim.

10. The main contention of learned Counsel for the plaintiff is that the said amounts mentioned in item No. (iv) is already barred by time so as the other three claims mentioned in the written statement. It appears from the order passed on 1st March, 2007 that the above mentioned claims i.e. claims (i) to (iii) mentioned in the counter statement are prima facie barred. This Court feels that similar yardstick will apply to the claim mentioned in item No. (iv) of the proposed written statement in which the defendant has sought the amendment if this is also time barred. It is not in dispute that all the claims mentioned are almost for the same period and whether this claim No. (iv) is time barred or not as argued by the plaintiff/non-applicant, the same would be considered at the time when the other three claims referred as (i) to (iii) will be determined by the court hence, no hardship would be caused to the plaintiff if this Court allows the amendment. Therefore, there is no impediment for the court to allow such amendment.

11. It is well settled law that while considering the issue of amendment in the written statement to be allowed or not, the court does not go into the merit of the matter nor it decides whether or not the claim made therein is bona fide or not. (Ref: Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd., .)

12. In the recent judgment of the Apex Court reported in Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, . it was specifically observed that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. In allowing the amendment in the written statement, a liberal approach is a general view when admittedly in the event of allowing the amendment, the other party can be compensated in money. The relevant para 16 of the judgment read as under:

16. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K.N. Narayana Pillai Vs. P. Pillai and Another, and Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., . Even the decision relied on by the plaintiff in Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan

Ramdas Choudhary . In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows:

As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action.

13. It is trite that the court will not go into the correctness and falsity of the amendment while deciding upon whether the amendment should be allowed or not. The merits of amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment. (Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, and Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd.,].

14. In view of the above, the present application is allowed subject to the costs of Rs. 5,000/- to be paid to the plaintiff by the defendant within two weeks from today.