
(1996) 01 DEL CK 0037

In the Delhi High Court

Case No : Interim Application No. 303 of 1994 and Suit No. 673 of 1988

Punjab and Sind Bank

APPELLANT

Vs

New India Knitting Miltb

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

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

Citation : (1996) 1 AD 211 : (1996) 1 CLT 200 : (1996) 36 DRJ 15

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : A.S. Chandhiok, Amar Gupta and Atul Kumar, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) This is an application filed by the defendant under Order Vi Rule 17 Cpg seeking an amendment in para 7 of the written statement. The defendant by the amendment seeks to aver that the documents filed by plaintiff and purported to have been executed by the defendant are forged and fabricated and that none of the documents produced by the plaintiff bank arc signed by any of the partners of the defendant No.1.

(2) The amendment sought is opposed by the plaintiff, as being a malafide one, highly belated and for resiling from the admissions made.

(3) The facts in brief leading to the filing of this application are:

(I)The plaintiff had filed a suit for recovery on 2nd April, 1988 for Rs. 238,958.42 against the defendant No.1 and defendant Nos.2-4. The case of the plaintiff is that defendant No.2, who had an account with the plaintiff bank had represented that M/s. Batus Retail Group had got a Letter of Credit from the first Chicago International, New York and that the documents of defendant No.1 be purchased and or negotiated. Further that since defendant No.1 did not have any account with the plaintiff bank, the amount to be advanced be credited to the account of

defendant No.2.

(II)The plaintiff claims that the bill drawn on M/S. Batus Retail Group by defendant No.1 for U.S. \$ 14879.72 was negotiated under the Letter of Credit and presented to the bank of defendant No.1. The documents had been negotiated "under reserve". The bill on presentation was returned unpaid as the documents were said to be not in accordance with the Letter of Credit. It is further claimed that defendant No.2 i.e M/S. Diana Exports and partners i.e. defendant No.3 and 4, admitted their liability and paid the sum of Rs.25,000.00 and the balance amount was due from them. The plaintiff claims that defendants are jointly and severally liable to pay the amount.

(III)The defendant No. 1 had filed its written statement averring that it was entitled to quota for past performance, which was transferable and infact had been transferred to defendant No.2. Defendant No.1, claimed that it had neither claimed any amount from plaintiff nor any amount was paid by the plaintiff bank to it. Further that it did not represent to the plaintiff to purchase the bill or advance a sum of Rs. 1,80,000.00 against the said documents. There was no privity of contract or relationship between the plaintiff bank and defendant No.1.

(4) The above background is sufficient for the purpose of the present application and the merits of the matter need not detain me any further.

(5) As stated the suit was filed on 2-4- 1988. The written statement though dated 14-11- 1988 was filed on 1-3-1989. It is the defendant's case that the plaintiff filed the first set of documents on 4-7-1988. Copies of the said documents were, however, supplied to defendant No.1, only on 14-3-1990. The written statement had been filed prior to the said date. The plaintiff admittedly filed the second set of documents on 22-10-1990. The admission/denial of documents was done on 5-2-1991, when all the documents including those in respect of which the defendant wishes to make an additional averment that the same were forged and fabricated were denied.

(6) Mr. Chandhiok, learned counsel for the defendant submitted that the plea of the defendant No.1 has been that there was no privity of contract with the plaintiff and there were no dealings between the plaintiff and defendant No.1. It is by the proposed amendment that defendant No.1 wants to take up the plea of documents, being forged and fabricated .Learned counsel for the plaintiff has been at pains, to point out that the defendant No.1 had not earlier denied the averments in the plaint that a request had been made by the defendants to the plaintiff bank to purchase and or negotiate the documents of the defendant No.1. It is urged that the defendant No.1 had not denied the existence of documents prepared in terms of the Letter of Credit. It is stated that the defense was that the bills of defendant No. 1 though in existence and purchased by the plaintiff, defendant No.1 was not liable since no benefit has been received by defendant No.1. The plea, however, now sought to be taken is that the documents are forged. plaintiff claims that there was an admission of the defendant that the bill

was drawn by defendant No.1, from which it seeks to resile. Counsel submits that few of the documents in the first set of documents filed, referred to the documents which were filed later, yet the defendant No.1 did not claim them to be forged and; fabricated in the written statement.

(7) On perusal of the plaint, it is seen that the second set of documents which form the subject matter of the amendment sought in para 7 had not been filed at the time when the defendant filed its written statement. In fact the plaintiffs case is that the said documents were filed after seeing the stand taken by the defendant No.1. It also cannot be lost sight of that the defendant No. 1 during the admission/denial has denied all the documents. The defendant's basic plea appears to be that the quota had been transferred to defendant No.2 and he had no dealings with plaintiff.

(8) Considering the facts and circumstances of the case and the well settled principles for allowing amendment in the written statement, I am of the view that the amendment in the written statement deserves to be allowed. The defendant did not have the opportunity to take the plea that the said documents are forged and fabricated when the written statement was filed since these documents were filed subsequently on 22-10-1990. Merely because a reference was made to some of these documents in the first set of documents and the defendant failed to take the plea of these documents being fabricated and forged is not sufficient to shut out the pleas of the defendant No.1. The defendant No.1 explains that copies of the first set of documents were not supplied to him and were not referred to in the plaint. Counsel for the plaintiff submitted that at the relevant time under the Original Side's Rule copies of documents were not required to be supplied. On the first opportunity, these documents had been denied by defendant No.1 during the admission/denial. The application, no doubt ,is belated. However, the trial is yet to commence and the plaintiff can be compensated with costs. The plea of the plaintiff that if the amendment is allowed a false and inconsistent plea would be set up is not correct in as much as there was no specific admission of the defendant from which he can be said to be resiling. Besides the falsity or the merits of the amendment sought are not to be considered at the stage of the amendment application. It is not necessary to advert to the various authorities cited by either of the parties.

(9) In view of the foregoing discussion, the amendment is allowed subject to costs of Rs. 3000.00 . The amended written statement is taken on record. The I.A stands disposed of.