

(2011) 01 DEL CK 0341

In the Delhi High Court

Case No : RA No. 244 of 2010, I.A. 3542, 5310, 5311, 7500, 7501, 7502, 7507 of 2010, 988 and 11729 of 2009 in CS (OS) 2208 of 1995

The Hindustan Times Limited

APPELLANT

Vs

Vipin Malik and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0341

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rajiv Nayar and Darpan Wadhwa, Seema and Deepali Sharma, for the Appellant; Chirag M. Shroff and Dattatray Vyas, for the Respondent

Judgement

S. Ravindra Bhat, J.—This common order will dispose of first Defendant's applications and review petition being RA No. 244/2010, I.A. 3542/2010, 5310/2010, 5311/2010, 7500/2010, 7501/2010, 7502/2010, 7507/2010, 988/2009, 11729/2009 and 13514/2009.

2. Briefly, the Plaintiff in the suit alleges that the Defendants had on 5th May, 1995 through a consortium (formed in terms of a joint venture agreement), responded to a bid floated by the Department of Telecommunications, Government of India, for Cellular Telecommunication infrastructure and services in different parts of India. It is alleged that in terms of the joint venture agreement, the first Defendant had the necessary eligibility for which it had to maintain direct shareholding of at least 10%. The fifth Defendant/applicant according to the suit had personal interest in ensuring that the bid did not fail and had apparently approached Ms. Shobhna Bhartiya for this purpose. The Plaintiff claims that it never ratified the conduct of the fifth Defendant, to commit them to the joint venture agreement so as to make it a party thereto.

3. The suit was being contested for a considerable time and on 21st November, 2007, this Court by its judgment rejected the original fifth Defendant/applicant's application for dismissal of the suit. Apparently, during the pendency of the

proceedings, the disputes between the Plaintiff and the first four Defendants ended; consequently the original fifth and sixth Defendants survived to contest the case. The Plaintiff had moved an application being IA No. 5864/2008, which was granted on 28.04.2009; the Defendants were permitted to file written statement to the amended plaint within four weeks. The Court had also directed the consolidation of two suits being CS(OS) No. 971/1998 and 977/1998. The Court had by its order directed the parties to file original documents so that the admission/denial could be carried out.

4. The order sheet of 19th August, 2009 shows that the Defendant had not filed written statement to the amended plaint despite the time granted in that regard. Eventually the same was placed on record (as is evident from the order dated 01.09.2009). In this view of the matter, the Defendant had moved applications I.A. 13514/2009 and 13515/2009 seeking liberty to place on record certain documents. Also other reliefs were claimed. It was contended that these set of documents sought to be placed on record, were essential for adjudication of the disputes. The Court disposed of this application in the following terms:

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I.A. Nos. 13514-13515/2009

The applicant/Defendant requests the Court to take on record documents, which he says, are essential for the purpose of proving this case. Learned Counsel relies upon the previous orders of the Court dated 17.12.2009 where it had been stated that the parties were to mark the documents, since by an earlier agreed order dated 10.09.2009, the Court had recorded their consent for not leading any oral evidence in these three cases.

During the course of hearing, it is submitted by Mr. Chirag. M. Shroff, learned Counsel that the documents that are now sought to be placed on record are copies of the documents that were filed by Defendant Nos. 1 to 3, and that some other documents are now sought to be placed on the record. So far as the existing documents which are already part of the record are concerned, this Court perceives no objection to directing the Plaintiff to admit/deny the same even though they have settled the disputes with Defendant Nos. 1 to 3. As far as other documents sought to be placed on record now are concerned, this Court is of the view that no adequate reason has been indicated in the application as to why the Defendants are now, after recording the consent of the parties for not leading oral evidence, seeking to place the additional documents. It is not as if the documents were not in the possession of the party, i.e. the Defendants, at the stage when they filed the written statement along with the list of documents. In the circumstances, I.A. Nos. 13514/2009 and 13515/2009 are granted to the extent that the Plaintiff shall admit/deny only the documents which were originally filed with the written statement of Defendant Nos. 1 to 3, and the documents filed by Mr. Vipin Malik. I.A. Nos. 13514/2009 and 13515/2009 are disposed of in the above terms.

CS (OS) 2208/1995, CS (OS) 971/1998 and CS (OS) 977/1998

The Plaintiffs are directed to file affidavits, admitting/denying the documents already on record, and filed by the Defendant Nos. 1 to 3, within two weeks from today. List all the suits before the Joint Registrar on 26.05.2010, for scrutiny and formal marking of documents. List before the Court on 07.12.2010.

The Plaintiff in CS (OS) 2208/1995 may, if it chooses, file replication within two weeks.

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5. By IA No. 5130/2010 the Defendant seeks a clarification that the previous applications had not been fully disposed of and that some of the contentions urged by them required to be considered. In the meanwhile, on 10th September, 2009 the parties had agreed that all the suits could be tried together and that neither of them (the parties) would lead oral evidence in respect of their respective claims. The Defendant/applicant urges in support of the request for Review (of the order dated 19.03.2010) that the Court erroneously did not consider all the relief's sought for in IA No. 13514/2009. It is submitted that in terms of the previous order they were permitted to file documents along with their pleadings, the Court did not fix any date or time for this purpose, and instead the Court permitted only some documents to be taken on record, not granting opportunity to place additional documents (which were necessary on account of deletion of first four Defendants from the array of parties), is an error apparent on the face of the record. It is urged that the Defendants had consented to give up the right to cross-examine the witnesses and forego a full trial on the understanding that all their documents necessary to justify and prove their case would be permitted to be taken on record and considered. It is also stated that the order dated 19.03.2010 fails to give any reasons with regard to the denial of relief's other than of the limited concession granted by the Court in IA 13514/2009. Learned Counsel also urged the same contentions in support of IA No. 5310/2010.

6. This Court has carefully considered the submissions. The order dated 19.03.2010 was made in the presence of the parties' counsel, and after considering their arguments. It clearly records that the applicant's counsel had categorically submitted for liberty to place on record various documents including those which had been placed on record by the first three Defendants. As regards the said existing documents, the Court did not find any objection to take them on record on behalf of the Defendant/applicant. However, as regards others, the Court was of the opinion that no adequate reasons had been indicated why the Defendants were - at that stage, after recording their consent for not leading oral evidence- seeking to place such additional documents. The Court also observed that the Defendants never stated that such documents were not in their possession at the stage when they filed the written statement. In fact the written statement did not enter any list containing such documents.

7. Furthermore the Court has also considered the previous orders, particularly those after the suit was permitted to be amended. They disclose that despite repeated opportunities and even direction to pay costs, the Defendants did not file their written statements, and did so belatedly. The endeavor of the Court while recording the consent of the parties to forego a full fledged trial was to ensure expeditious adjudication of the dispute, which is now more than 15 years. Having regard to the fact that the amendment was allowed in 2009, and the Court was unable to even frame issues since the Defendants persistently defaulted in the filing of the written statement and later moved one or the other application for bringing on record different sets of documents. The order of 19.03.2010 indicates that the Court's approach in necessitating and in ensuring stage for final hearing, was hastened.

8. It was urged by learned Counsel in addition to other arguments, in the present lot of applications that the rejection of the request to place on record such additional documents would compel Defendant to withdraw its consent to the expedited trial. The Court is unable to discern or fathom any coherent reason for such a statement - which has also been articulated in the application. This is because the consent given on behalf of the Defendants was a comprehensive one and was not conditional upon the Court fulfilling or performing any duty. It was not, and cannot be seen as a quid pro quo for the Court to pass and continue passing orders of a kind. The procedure indicated and agreed to by the parties placing on record the necessary documents (which of course had to be within bounds of reasons and not sought to be supplied at different intervals even during ongoing proceedings) is applicable to both the contesting parties, and denial of liberty to the Defendant to place an entire mass of documents at this belated stage, cannot be a reason for withdrawing such consent. Accepting such a plea would amount to the Court conceding to unreasonable demands of the litigant, which is hardly feasible.

9. This Court also notices that the imperative of an expeditious trial and resolution of civil disputes can hardly be undermined. The suits have been pending for over 15 years. In these set of cases, the parties were unable to even complete the pleadings even after the amendments were allowed. The Defendant defaulted for a considerable period of time and thereafter started moving applications to bring on record documents, which ought to have been placed in the first instance. In these circumstances, the attempt made on behalf of the Defendants to have the previous orders clarified or revoked on various grounds only leads this Court to conclude that they are meant to delay and drag on the proceedings.

10. For the above reasons, the Court does not find any reason to clarify, modify recall or review any of its previous orders. RA No. 244/2010 and I.A. Nos. 3542/2010, 5310/2010, 5311/2010, 7500/2010, 7501/2010, 7502/2010, 7507/2010, 988/2009 and 11729/2009 are accordingly disposed of.

CS(OS) No. 2208/1995

List the suit for further proceedings before the Regular Bench as per Roster on 4th April, 2011.