

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 359/2007 & CM 3691/2007, 2397/2009**

Reserved on: February 17, 2009

Date of Decision: February 27, 2009

M/S. PRESTIGE HOUSEHOLD
PRODUCTS & ANR.

Through:

.....Petitioners

Mr. Jagjit Singh, Advocate

Versus

ANNANT JAIN & ANR.

Through:

.....Respondents

Mr. R.S. Kela, Advocate for
Respondent No. 1

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest?No

J U D G M E N T

MANMOHAN, J

1. Present petition has been filed under Article 227 of Constitution of India for setting aside order dated 30th November, 2006 passed by Additional District Judge whereby respondent no. 1's application for amendment of plaint under Order 6 Rule 17 CPC was allowed.

2. Briefly stated the facts relevant for disposal of the present petition are that in accordance with Memorandum of Understanding (hereinafter referred to as "MOU") dated 22nd February, 2001, respondent no. 2 sold a BMW Car to respondent no. 1. But as respondent no. 1 was not satisfied with the

BMW Car, he returned it to respondent no. 2 and asked for refund of purchase price of Rs. 9 lacs as provided for in the MOU. However, respondent no. 2 expressed his inability to refund the money and in lieu of BMW Car, he offered respondent no. 1 a Mercedes Benz Car (hereinafter referred to as “Car”) on payment of an additional amount of Rs. 3.9 lacs.

3. It is the petitioners’ case that respondent no. 2 was not authorised to sell the Car without their permission. It is further petitioners’ contention that respondent no. 2 was only asked to find a buyer for their Car.

4. But from record it is apparent that respondent no. 2 after receiving additional payment of Rs. 3.9 lacs issued a cheque in favour of petitioners, but the said cheque was dishonoured.

5. While petitioners filed an FIR being No. 43/2002 against respondent no. 2, respondent no. 1 filed a suit for injunction being Suit No. 2244/2001. This Court on 1st November, 2001 in respondent no. 1’s suit for injunction restrained petitioners and respondent no. 2 from taking over the Car’s possession.

6. However, on an appeal being filed by petitioners being FAO(OS) No. 108/2002, the Division Bench stayed learned Single Judge’s order by virtue of which it had directed non-seizure of Car. Division Bench also gave liberty to petitioners as registered owners of the car to approach a court of competent jurisdiction for custody of the Car in accordance with law. The Car was thereafter released to petitioners by a Metropolitan Magistrate on superdari of Rs. 25 lacs.

7. Thereafter respondent no. 1 filed an application in Suit No. 2244/2001 seeking restitution of possession of the Car or a direction to petitioners and respondent no. 1 to deposit a sum of Rs. 12.90 lacs in Court. On 9th July, 2003 by an ad-interim order, a learned Single Judge of this Court directed petitioners to deposit in Court cost of Car i.e. Rs. 12.90 lacs within one week.

8. However, on petitioners' filing an application being IA No. 7852/2003 seeking recall of order dated 9th July, 2003, a learned Single Judge of this Court after hearing parties at length vide his order dated 30th July, 2004 in exercise of his inherent power, recalled order dated 9th July, 2003.

9. It was only on 25th August, 2005 that respondent no. 1 filed an application for amendment of his plaint by seeking to incorporate relief of recovery of money from both petitioners as well as respondent no. 2. The said application for amendment was allowed vide impugned order dated 30th November, 2006 by Additional District Judge, as by that time due to increase in pecuniary jurisdiction of this Court, the suit was transferred to trial court. The amendment application was primarily allowed on the ground that the said suit was at an initial stage wherein issues had not been framed and that amendment had been necessitated because of subsequent events that had transpired after institution of the suit. In the impugned order, learned ADJ specifically stated that the issue whether respondent no. 1 can legitimately seek refund from petitioners is something that would become clear only at the trial of the suit.

10. Learned Counsel for petitioners, Mr. Jagjit Singh submitted that respondent no. 1's amendment application could not have been allowed as that would amount to changing nature of the suit from a suit for declaration and permanent injunction to a suit for recovery. He further submitted that amendment application having been filed on 25th August, 2005 i.e. after 3 years and 10 months of filing of suit, the same was clearly barred by limitation and respondent no. 1 on 25th August, 2005 could not have filed an independent suit for recovery. In this connection, learned Counsel for petitioners relied upon following judgments :-

A) *Muni Lal Vs. The Oriental Fire & General Insurance Company Ltd. & another* reported in *AIR 1996 SC 642*;

B) *Vishwambhar and others Vs. Laxminarayana (Dead) through LRs and another* reported in *AIR 2001 SC 2607*;

C) *Mrs. Janet Anne Woolqar James & Ors. Vs. Jaypee Hotel Ltd.* reported in *83(2000) Delhi Law Times 277 (DB)*;

D) *Narain Singh Vs. M/s. Ansal Properties and Industries Ltd. & Another* reported in *1999 VI AD (DELHI) 394*; and

E) *Nimmaraju Sambasadasiva Sarma Vs. Potharaju Venkateswara Rao and others* reported in *1997 A I H C 2135*.

11. In my opinion, petitioners' submission are untenable in law inasmuch as when the suit for declaration and permanent injunction was initially filed in 2001, respondent no. 1 was in possession of the Car. It was only when respondent no. 1 lost the car's possession and when order of restitution dated

9th July, 2003 was recalled vide order dated 30th July, 2004, that a cause of action accrued in favour of respondent no. 1 to seek recovery of money from respondent no. 2 and the petitioners.

12. Consequently, in my view by way of present application for amendment, respondent no. 1/plaintiff is seeking to incorporate a relief which had accrued in his favour subsequent to filing of his suit and more particularly on 30th July, 2004 when restitution order dated 9th July, 2003 directing petitioners to deposit an amount of Rs. 12.90 lacs, was recalled.

13. The Hon'ble Supreme Court in catena of cases has held that approach of courts while considering amendment applications has to be liberal and those amendments which subserve the ultimate cause of justice and avoid further litigation should be allowed (refer:- to *Pankaja & Anr. Vs. Yellappa (Dead) by LRs & Anr.* reported in (2004) 6 SCC 415), *B.K. Narayana Pillai Vs. Parameswaran Pillai & Anr.* reported in (2000) 1 SCC 712, and *Puran Ram Vs. Bhaguram & Anr.* reported in (2008) 4 SCC 102).

14. Consequently, the impugned order calls for no interference under Article 227 jurisdiction and the present petition and pending applications are dismissed but with no order as to costs.

MANMOHAN, J

FEBRUARY 27, 2009

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