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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.141 of 2010 & C.M. Appl. Nos.1962-1964 of 2010

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05.03.2010

M/S. J. KIMATRAI & CO. & ORS. Petitioners
Through: Mr. R.N. Sharma & Mr. Manish Kumar
Singh, Advocates.

Versus

KAPIL MONGA & ORS. Respondents

Date of Reserve: 1st February, 2010

Date of Order: 5th March, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition, the petitioners have assailed order dated 24th November, 2009 relating to disposal of an application under Order VI Rule 17 CPC made by the plaintiff (respondent No.1 herein) (by this order, the learned Additional District Judge had disposed of four applications; one under Order IX Rule 7 CPC, other under Order VII Rule 11 CPC, third under Order I Rule 10 CPC and fourth under Order VI Rule 17 CPC).

2. It is submitted by counsel for the petitioners that respondent No.1 moved this application under Order VI Rule 17 CPC after a gap of seven years from the date of filing of suit. The application was highly belated and the claim sought to be made through amendment had become bared by limitation. No justifiable reasons were given by the plaintiff (respondent herein) for filing application under Order VI Rule 17 CPC at such a belated stage. It is further submitted that the amendment sought by the plaintiff was

going to change the nature of the suit as in the original suit, it was alleged by the plaintiff that total fabric measuring 39,842.45 meters was lying in the shop whereas by way of amendment, the plaintiff wanted to allege that the defendants (petitioners herein) had fraudulently and dishonestly forged bills for fabric measuring 5503.10 meters belonging to the plaintiff.

3. This suit was filed by the plaintiff for recovery of Rs.15,80,419.53 from the defendants on the ground that goods of this much amount, owned and belonging to plaintiff, were in custody of defendants in shop No.629/631, Corner Katra Asharfi, Chandni Chowk, Delhi when the shop was forcibly closed on 26th March, 1996 due to disputes *inter se* between the family members of M/s. J. Kimatrai & Company, that is, defendant No.1 (petitioner No.1 herein), a partnership firm. The plaintiff by way of amendment wanted to bring on record certain facts which were discovered during investigation of FIR No.100 of 1998, Police Station Chandni Chowk regarding fabrication of bills of the firm, namely, defendant No.1 by using blank/unused bill books.

4. The learned trial court observed that the case was still at preliminary stage and the trial has not yet started and also found that the facts which plaintiff wanted to bring on record only gave details as to the treatment meted out to the cloth of the plaintiff lying in the shop belonging to the petitioner/defendant and considered that the amendment was not going to cause prejudice to the defendants. The trial court also found that the court could not go into the merits of the amendments at the time of considering amendment application.

5. It is not disputed that the suit though filed in May, 2000, was still at the preliminary stage. It was initially lying in the High Court. Later on, on transfer of

jurisdiction upto 20 lac to the District Court, it was transferred to the District court and the District Court after receiving the suit by transfer disposed of several pending applications lying undisposed including the application under Order VI Rule 17 CPC. Since the suit was at initial stage, the question of any prejudice to the defendants would not arise as the defendants would have an opportunity to file written statement to the amended plaint. It is also not a case where time barred claim was being sought to be included by the plaintiff. In fact, the plaintiff has not changed the quantum of claim or nature of claim and has only sought to bring on record the conduct of the defendants as learnt by the plaintiff because of investigation in FIR No.100 of 1998. This conduct, according to the plaintiff, had important bearing on the facts of the suit and in adjudication of the case.

6. Under Article 227 of the Constitution of India, this court does not sit as a court of appeal against the orders of trial court. It is not a case where trial court has put law regarding amendment to pleadings under Order VI Rule 17 CPC aside and decided the application in an arbitrary and whimsical manner. The suit was at initial stage and it is settled principle of law that before framing of issues, the parties, with the leave of the court, can amend the pleadings so as to help the court in adjudicating the dispute between the parties.

7. I, therefore, find no infirmity in the order of the trial court warranting interference of this court under Article 227 of the Constitution of India. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 05, 2010
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