

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

Date of Order: February 03, 2010

CM(M) No. 155/2010 & CM No. 2112/2010

%

03.02.2010

O.E.Sebasstian & Ors.

... Petitioners

Through: Petitioner-in-person

Versus

HDFC Ltd.

... Respondent

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?

ORDER (Oral)

By this petition, the petitioner has assailed order dated 18th August, 2007 whereby her application under Order 6 Rule 17 CPC to amend the Written Statement and for set-off was dismissed.

The suit pending before the trial Court was filed by HDFC Limited since the petitioner had failed to pay her dues of the loan taken from HDFC Limited for purchase of a flat. In the application under Order 6 Rule 17 CPC, the petitioner (defendant before the trial Court) alleged that HDFC Limited, advocate of Registrar of Society and police personnel etc. had colluded with her employer in order to keep her unemployed so that she was not able to pay dues of HDFC Limited. If she had been employed, she would have earned Rs.1 lac per month and because of her continuous unemployment she suffered not only loss of salary, mental, physical, material and emotional torture for 07 years and therefore she was entitled to a claim of Rs.84 lac on account of loss of salary, Rs.50 lac on account of emotional torture etc. 1,68,000/- loss due to non release of balance amount by HDFC Bank. Thus, she claimed a total amount of Rs.1,59,00,000/- was the loss suffered by her and she wanted to amend her WS so as to claim a set off/counter claim of Rs.1,59,00,000/- (Rs.One Crore Fifty Nine Lac). The trial Court observed that the amendment in the WS claimed set off/counter claim of Rs.1,59,00,000/- could not be allowed - one because it was beyond jurisdiction of the Court to entertain such a claim as the

jurisdiction of the Court was limited upto only Rs.20 lac and second that the set off could not be allowed because the claims raised by the defendant (petitioner herein) by way of set off or counter claim were not germane to the suit and cause of action before the trial Court regarding non-payment of loan by the defendant to the plaintiff (HDFC Limited). The trial Court observed that she was at liberty to file a separate suit in respect of counter claim but the alleged counter claim cannot be claimed by way of an amendment as it had not accrued to her in the same cause of action.

I consider that the trial Court was right in rejection of application under Order 6 Rule 17 CPC made by the petitioner. There is no infirmity in the order of the trial court and it does not warrant any interference by this Court under Article 227 of the Constitution of India. The petition is hereby dismissed.

February 03, 2010
vn

SHIV NARAYAN DHINGRA, J.