

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

% *Order delivered on: 30th July, 2013*

+ **CM(M) No.757/2013**

M/S ALFA TYRE Petitioner
Through Mr.Sandeep Kumar, Adv.

versus

M/S TECHNO TYRE INDIA Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

C.M. No.11614/2013 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

CM(M) No.757/2013 & C.M. No.11613/2013 (for stay)

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India assailing the order dated 14th March, 2013 dismissing the petitioner's application under Order VI, Rule 17 CPC seeking amendment in the written statement in a suit for recovery of ₹6,10,393.27/- filed by the respondent against the petitioner arising out of commercial transactions between the two parties. The petitioner is the defendant in the suit.

2. In the written statement, the petitioner denied the claim of the respondent on ground that the copies of the bills and the invoices relied upon

by the respondent were forged and fabricated documents. In the application under Order VI, Rule 17 CPC, the petitioner stated that they had raised a preliminary objection in the written statement that the respondent had concealed the facts from the Court. However, the detailed facts were not pleaded though were informed by them to their clients. Hence, in this regard the said application was filed.

3. In their reply to the said application, the respondent contested the claim of the petitioner by stating that the said amendment sought to introduce new facts and defences.

4. The learned trial court observed that the said application was filed when the matter was listed for defendant's evidence, and as such, the trial had already commenced. It was also observed that admittedly, the proposed facts mentioned in the amendment application were neither pleaded in their reply to the legal notice nor in the written statement earlier. The Advocate, who sent the reply to the legal notice on the behalf of the petitioner, was the same who filed their written statement. It was only once, after the petitioner engaged a new counsel on 28th April, 2012 that they came to know about the proposed facts and defences. In view of the same, it was held that the petitioner had failed to show due diligence and the said application was dismissed with costs.

5. After hearing the learned counsel for the petitioner, I find no force in his submission in view of the facts of the present case. I am of the view that the learned trial Court has rightly rejected the application of the petitioner for amendment of the written statement. It appears that the petitioner is trying to delay the proceedings which are pending in the trial Court.

6. The learned trial Court while dismissing the application of the petitioner has given the cogent reasons which are mentioned in paras 14 & 17 of the impugned order. The same are reproduced below:-

“14. In the present suit, the written statement was filed on 27.07.2010. On 27.10.2010, issues were framed. On 06.04.2011, the plaintiff tendered his affidavit in evidence and the matter was adjourned for cross-examination of PW 1 subject to cost. The defendants failed to cross-examine the witness nor paid the cost, therefore, the right of the defendants to cross examine PW1 was closed on 02.04.2012 and matter was fixed for the defendant evidence. On 08.05.2012, the defendants moved an application for recall of the said order. On 06.08.2012, the defendants moved the present application. On 25.10.2012, the order dated 02.04.2012 was recalled subject to cost. The present application was filed when the matter was listed for the defendant’s evidence. As such, the trial has already commenced.

17. The falsity in the version of the defendants can be ascertained from the fact that admittedly, the defendants sent a reply dated 02.02.2010 through Sh. Sanjeev Kaushik, Advocate. In the said reply, there is no mention of alleged oral partnership and the acts done by the plaintiff in pursuance thereto as mentioned in the present application. It is not the case of the defendants that the contents of the said reply are incorrect and incomplete. It is also not the case of the defendants that they had informed the fact of oral partnership to their counsel but he had not mentioned the same in the reply. As such, the reply was complete in all respect. The defendants have failed to explain why the said facts were mentioned in the reply. As such, an adverse inference can be drawn against them.”

7. In view of the aforesaid reasons, there is no merit in the petition and the same is dismissed with cost of ₹5,000/-.

(MANMOHAN SINGH)
JUDGE

JULY 30, 2013