

Company Application Nos.161 and 162 of 2015
in
C.P.Nos.189 and 190 of 2013

R. MAHADEVAN, J.

These applications have been filed to permit the applicant/respondent to file additional counter affidavits in Company Petition Nos.189 and 190 of 2013.

2. The company petitions had been filed by the petitioner/respondent to wind up the applicant/respondent company, namely, Canadian Crystalline Water India Limited under the provisions of the Companies Act, 1956.

3. The applicant/respondent had already filed their counter affidavits on 19.11.2013 and now they have filed the above applications to permit them to file additional counter affidavits.

4. Heard both sides.

5. The learned counsel for the applicant/respondent has submitted that after the filing of their counter affidavits in both the company

petitions, when the applicant had perused the files, they found that certain important aspects have been omitted to be referred to and the disputes regarding the goods delivered and the rejection of following eight slips by the petitioner/respondent.

“ a.103/9.8.2011

b. 104/9.8.2011

c. 104/9.8.2011

d. 115/22.11.2011

e. 116/22.11.2011

f. 119/8.12.2011

g. 130/2.1.2012

h. 131/2.1.2012”

6. Further, the learned counsel has argued that the applicant/respondent is not payable any money to the petitioner/respondent and to substantiate their claim, the applicant has come forward to file additional counter affidavits and therefore, unless and otherwise, the applicant/respondent is permitted to file their additional counter affidavits, they cannot prove their case.

6a. The learned counsel has maintained that since the materials supplied by the

petitioner/respondent were of inferior quality and thereby the applicant/respondent had suffered huge loss and therefore, a counter claim for damages suffered by the applicant/respondent is made in the additional counter affidavits and therefore, the above applications may be ordered as prayed for.

7. On the other hand, the learned counsel for the petitioner/respondent has submitted that though the applicant/respondent had filed their counter on 19.11.2013 and after more than a year, they have again come forward to file additional counter affidavits to stall the winding up proceedings by way of claiming damages, which cannot be allowed to be permitted.

7a. Further, the learned counsel has argued that the applicant/respondent has not stated any reason as to why they had not made any claim in their counter affidavits and what is the reason for making such a claim in the additional counter affidavits, which have not been stated in their additional counter affidavits and therefore, these applications have to be dismissed.

8. The learned counsel has contended that any document is found or any new fact is found, which could not have been mentioned in the counter affidavit that alone by way of additional counter affidavit could be brought to the knowledge of this Court in support of their case and that too without

taking a different stand or claim in the counter affidavits.

9. In support of her contentions, the learned counsel has relied upon the following decisions: -

a.

Kolandasmy vs. Rathinam @ Rathinayal (MANU/TN/1484/2002).

b. N.Srinivasan vs. Muthammal (MANU/TN/0164/ 1998).

c. M/s. Modi Spinning and Weaving Mills Co. Ltd. and another vs. M/s. Ladha Ram & Co. (1976(4) SCC 320).

d. Heeralal vs. Kalyan Mal and others (1998 (1) SCC 278).

f. H. Ramachandra Rao vs. A. Mohideen (MANU/TN/1234/1999).

10. I have considered the afore said submissions and perused the materials available on record.

11. The only question to be decided is whether the applicant/respondent has made out any case to file their additional counter affidavits.

12.

Before going into that question, it is better to see the principles laid down in

the decisions relied on by the learned counsel for the petitioner/respondent.

13. In

N.Srinivasan's case (MANU/TN/0164/1998), the learned Single Judge of this Court has observed as under:-

“Mr. Yashod

Varadhan, learned counsel for the respondent refers to a ruling of the Supreme Court reported in, **Herralal v. Kalyan Mal and others, 1997 (10) Sup 6**. In the said case, learned Judges considered as to whether it was permissible to allow the parties to plead inconsistent pleas. In the said judgment a reference was made to an earlier decision of the Supreme Court reported in, **Akshaya Restaurant v. P. Anajanappa and another MANU/SC/1017/1995 : AIR 1995 SC 1498**. In that case it was observed by the Bench consisting of the two learned Judges that it was settled law that even the admission made in the original pleadings can be explained and even inconsistent pleas can be taken in the pleadings. The Supreme Court in **Herralal's case, 1997 (10) Supreme 56**, went further to observe that the earlier decision of the Supreme Court consisting of three learned Judges rendered in, **Modi Spinning and Weaving Mills Co. Ltd., and another vs. Ladha Ram and Co. 1997 (1) SCR 728** was not taken into account by the latter Bench consisting of two learned Judges. After having referred to the same Their Lordships have observed as follows:-

7A..... This decision of a Bench of three learned Judges of this Court is a clear authority for the proposition that once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. Unfortunately, the aforesaid decision of the Bench of two learned Judges that decided the case in ***Akshaya Restaurant, MANU/SC/1017/1995 : 1995 Supp. (2) 303***. In the latter case it was observed by the Bench of two learned Judges that it was settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. The aforesaid observations in the decision in ***Akshaya Restaurant, MANU/SC/1017/1995 : 1995 Supp. (2) SCC 303*** proceed on an assumption that it was the settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. However, the aforesaid decision of the three member Bench of the Court in ***Modi Spinning, 1997 (1) SCR 728*** is to the effect that while granting such amendments to written statement no inconsistent or alternative plea can be allowed which would displace the plaintiff's case and cause him irretrievable prejudice."

8. Consequently, it must be held that when the amendment sought in

the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the learned decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view."

Therefore, the view of the Supreme Court be gathered from the judgment reported in *Heeralal v. Kalyan Mal and others 1997 (10) Sup. 56* is that an amendment which was sought for in the proposed additional written statement was of such a nature would displace the plaintiff's case, it cannot be allowed. No such amendments to written statement putting forth inconsistent or alternative plea which could displace the plaintiff's case and cause him irretrievable prejudice, can be allowed. Therefore, on the basis of the abovesaid judgment of the Supreme Court, the attempt on the part of the defendant/petitioner to put forth inconsistent pleas cannot be permitted, also having regard to the fact that the plaintiff cannot be deprived of the benefit of statutory presumptions as mentioned above."

14. In *Heeralal's case ((1998) 1 SCC 278)*, the Division Bench of the

Apex Court has held as under:-

"10. Consequently, it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiffs case it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the learned decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view."

15. In ***Kolandasamy's case***, (***MANU/TN/1484/2002***), the learned Single Judge of this Court has observed as under:-

"It is settled law that the defendant cannot insist that Court must receive additional written statement as of right. The above rule requires permission of the Court before any party can make a further pleading after written statement has been filed. Where a defendant intends to file additional written statement, he must file an application showing the circumstances as to why he failed to raise such a plea in the original written statement and the reason for the failure also must be acceptable."

16. A perusal

of the additional counter affidavits do not reveal that after the filing of the counter affidavits, the applicant/respondent had found some documents or materials, which necessitated them to file additional counter affidavits. On the other hand, it is the version of the applicant/respondent that certain important aspects made in the additional counter affidavits were omitted to be referred to in the counter affidavits, which cannot be accepted. Even, if such important aspects were omitted to be referred to, the additional counter affidavits should have been filed atleast within a period of a month. But that has not been done. Only after the passing of more than a year, now the applicant/respondent has filed the additional counter affidavits without showing any sufficient reason for the delay and that to prejudice to the case of the petitioner/respondent making the claim of damages from the petitioner/respondent, which cannot be entertained as held by the Hon'ble three Judges Bench of the Apex Court in ***Modi Spinning and Weaving Mills's case.***

17. When the

applicant/respondent intends to file additional counter affidavits, they must show the circumstances as to why they failed to raise such certain important aspects in their counter affidavits and the reason for the failure also must be acceptable, which has not been shown or acceptable in the case on hand.

18. Further, when the additional counter affidavits are filed, the averments or claim made in the additional counter affidavits should not displace the case of the petitioner/respondent. But here is the case is quite contra and therefore, such kind of introduction of a new case or claim cannot be entertained.

Moreover, if the dictum laid down in the above said decisions is applied to the case of the applicant/respondent, the inevitable conclusion would be that the above applications are liable to be dismissed and accordingly, the same are dismissed.

25.2.2015

R. MAHADEVAN, J.

RNB

Company

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DATE : 25.2.2015