4

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

Date of decision: 06.01.2010

\+ CS(OS) 1531/2006

M/S. DABUR (NEPAL) PVT. LIMITED . ..... Plaintiff
Through : Mr. Sudhir Makkar and Ms. Meenakshi Singh, Advocates.

versus

M/S. WOODWORTH TRADE LINKS PVT. LIMITED. ..... Defendant
Through : Mr. Jayant Bhushan, Sr. Advocate with Mr. D.P. Pande and Mr. Meenesh Dubey, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to Reporter or not? Yes.

3. Whether the judgment should be reported in the Digest? Yes.

S.RAVINDRA BHAT, J. (OPEN COURT)

I.A. Nos. 4952/2007 and 6468/2007

1. This common order will dispose of two applications – I.A. No. 4952/2007, filed by the defendant, seeking rejection of the suit, and I.A. No. 6468/2007, filed by the plaintiff, seeking permission to place on record what is termed as "the correct statement of accounts."

2. The plaintiff sues the defendant for recovery of Rs.2,65,50,777/-. The averments in the suit are that the plaintiff used to supply goods to the defendant; the plaintiff claims to be a Nepal-based company and a subsidiary of M/s. Dabur India Ltd. The other allegations in the suit are that the goods were supplied to the defendant, who in turn used to supply them to the parent company. The defendant in the written statement took the position that the suit is not

maintainable since the statement of accounts placed on the record does not show a debit balance and on the contrary, discloses that the defendant is entitled to the sum of approximately Rs.17 lakhs. On this averment, the defendant moved an application, I.A. No. 4952/2007, seeking rejection of the suit, stating that the plaint does not disclose any cause of action.

3. At the stage of the defendant's application, the plaintiff moved an application, I.A. No. 6468/2007, stating that the statement of accounts annexed along with the suit was a wrong one and that it pertained to M/s. Dabur India Limited. The plaintiff states that the list of documents filed along with the suit contained, by inadvertence and oversight, the account of transactions which took place between the defendant and Dabur India Limited, the plaintiff's holding company whereas the plaintiff, in fact, intended to place on the record the statement of account, reflecting the transactions between parties to the suit. The plaintiff explains the alleged lapse – in placing the incorrect statement due to the fact that the defendant had dealings with the plaintiff as well as Dabur India Limited, the holding company of plaintiff, and the papers were compiled and collected in Delhi.

4. It is submitted by learned senior counsel for the defendant that the plaintiff's application to place on the record what it terms to be the correct statement of account should not be entertained and that the suit itself is liable to be dismissed. He submits that the substitution sought has the effect of amending the suit which would rob the defendant's valuable right to the plaintiff's admission. Elaborating on this, it is contended that para 8 of the suit, which is affirmed by the affidavit of the plaintiff's Director categorically names the figures and also describes the statement of account – which forms basis of the suit. Any attempts to substitute that document would inevitably result in irreparable prejudice to the defendant in this case. Having admitted that the suit is based on certain documents which were originally placed on record, the plaintiff

cannot now resile from that averment and state a contrary fact that the document is something else and rely upon some other material, which talks of different transactions.

5. Learned counsel relied upon the judgment of the Supreme Court, reported as *Gautam Sarup v. Leela Jetly and Ors.* 2008 (7) SCC 85, and submitted that any attempt by a party to explain away the averments in a litigation would not be ordinarily countenanced. It was emphasized that the judgment recollected the previous law on the issue and noticed that the divergence in view taken by subsequent decisions was on account of the Supreme Court itself overlooking three decisions in *Modi Spinning Weaving Mills Co. Ltd. and Anr. v. Ladha Ram Co.* 1976(4) SCC 320.

6. Learned senior counsel for the defendant further submitted that even a casual glance at the so-called true statement of accounts, which is sought to be placed on record would reveal that it is a forged document. He submitted that though the suit mentions the statement as on 27.04.2005, the new documents sought to be placed on the record – reveals transactions which are purported to have taken place on several dates in May 2005. Learned counsel also pointed to two or three other instances where the new statement did not record the sequence of transactions – if it were a real and correct statement of account, the entries would have been in chronological order and there would have been no occasion for the plaintiff to go back and forth in point of time as has happened. It is submitted that for these reasons, the application as well as the plaint in the suit deserves to be rejected.

7. Learned counsel for the plaintiff, on the other hand, contended that there is no amendment of the pleadings; it is pointed out that the plaintiff has placed a mass of over 700 documents pertaining to the transactions which are reflected in the statement of accounts. While not denying that the amount mentioned in para 8 was based on a document originally filed but

which was subsequently discovered to be incorrect, the counsel underlined that the amount claimed to be due from the defendant continues to be the same and there is no amendment of the pleadings.

8. It is evident that reading of the suit would disclose that the plaintiff claims sum of Rs.2,28,39,374/-, on account of goods said to have been supplied to the defendant. The plaintiff has produced, in addition to statement of accounts, a large volume of documents, such as invoices and Consignment Notes. Its statement of account filed along with the suit originally, no doubt, reflected that some credit was due to the defendant. The suit in para 8 reads as follows:

> *"XXXXXX XXXXXX XXXXXX*
>
> *The Plaintiff submits that as per the books of accounts maintained by the Plaintiff, which are duly audited, a sum of Rs.(INR) 2,28,39,374/- was due and payable by the Defendant to the Plaintiff, as on 27th April 2005.*
>
> *XXXXXX XXXXXX XXXXXX"*

9. The suit was also affirmed by the Director of the plaintiff company. After the defendant filed the written statement, contending that no amounts were due and then moved an application for rejection of the suit, the plaintiff filed an application requesting to substitute the said statement of account with what is termed as the correct one. In the course of hearing, learned senior counsel for the defendant had relied upon provisions of Order 7 Rule 17, to submit that in such cases where statements of accounts are filed, it is incumbent upon the party seeking to rely upon them to produce originals before the Court and then have an endorsement issued. Subject to fulfillment of such conditions it would be permissible to file copy of the statement or entry.

10. In this case, the plaintiff, unlike in the judgments relied upon by the plaintiff, is not seeking any amendment of the pleadings. Although the effect of the substitution or relief sought in the application may be seen as having the effect of withdrawal of the submission, this Court is

of the opinion that such would not be the position. The basic claim of the plaintiff for Rs.2.28 crores still remains; the plaintiff continues to rely upon copies of invoices, Consignment Notes and Transport Receipts. The statement of account, therefore, is not the only basis of the suit, even though the defendant sought to prejudice para 8 of the suit as meaning that it was based primarily on the statement of accounts. So viewed, this Court is of the opinion that the relief sought by the plaintiff, i.e. placing on record what it terms the correct statement of accounts, is reasonable. However, the Court cannot, at the same time, be unmindful of the mandate of Order 7 Rule 17. In this case, apparently, the plaintiff did not comply with it. In the circumstances, interests of justice require that the plaintiff should be given an opportunity of placing on record the correct statement of accounts, provided the provisions of Order 7 Rule 17 are complied with in its full letter and spirit.

11. In view of the above discussion, it is held that I.A. No. 4952/2007 filed by the defendant is not maintainable; it is accordingly dismissed. I.A. No. 6468/2007 is disposed of with directions to the plaintiff to produce the original books of accounts before the Joint Registrar on 11.03.2010 and thereafter have the same endorsed after which the copy of the said statement or entries would be permitted to be taken on record.

S. RAVINDRA BHAT
(JUDGE)

JANUARY 06, 2010
'ajk'