

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.7990 of 2014

Date of Decision: 16.3.2016

M/s Ess Ess Kay Engg. Company Limited

---Petitioner

versus

M/s Kamal Kishore Goyal and sons and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Namit Gautam, Advocate
for the appellant**

**Mr. P.S.Khurana, Advocate
for respondents No. 1 and 2**

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

Rekha Mittal, J.

The present petition lays challenge to order dated 14.10.2014 (Annexure P-5) passed by the Civil Judge (Junior Division), Ludhiana whereby application of the petitioner and proforma respondents filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (in short "CPC") for amendment of the written statement has been dismissed.

Counsel for the petitioner contends that respondents No. 1 and 2 have filed a suit for recovery of Rs. 7,49,200/- i.e. principal amount Rs. 5,96,970.24 Paise and interest Rs. 1,52,229.76 Paise in regard to price of

polyamide/polycarbonate (black nylon) on credit as reflected in an account in the name of the petitioner company in the books of accounts maintained by the contesting respondents. The petitioner alongwith its co-defendants filed the written statement jointly and denied their liability to pay any amount much less the suit amount to the respondents. On completion of pleadings of the parties, issues were framed and one of the plaintiffs has already tendered into evidence his affidavit by way of examination in chief but cross examination is still to be conducted. It is argued that a new fact has emerged that necessitated amendment of the written statement by adding few lines in para 4 of the preliminary objections specifically incorporated in para 3(a) of the application for amendment (Annexure P-3). It is further submitted that the petitioner has sought amendment of the written statement at the earlier possible opportunity when otherwise no prejudice would be caused to the contesting respondents/plaintiffs in case the proposed amendment is allowed which is necessary and essential for proper and effective adjudication of the suit.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that defendants have failed to prove that the facts sought to be impleaded by way of amendment were not to their knowledge despite exercise of due diligence, therefore, the plea to be added by amendment is debarred in view of proviso appended to Order VI Rule 17 CPC. In support of his contention, he has relied upon judgment of the Hon'ble Supreme Court of India **Ajendraprasadji N. Pande and another vs. Swami Keshavprakeshdasji N. and others 2007(1) R.C.R. (Civil) 481.**

In reply, counsel for the petitioner would urge that on comparison of facts elicited in the affidavit filed by one of the plaintiffs with the account book maintained by the defendants, it was revealed that after all payments/adjustments, the plaintiff is liable to pay a sum of Rs. 29,260.50 paise to defendants and its associates/companies, sought to be incorporated by way of amendment.

I have heard counsel for the parties and perused the records.

It is none of the plea of the petitioner that in the plaint, the plaintiffs have not given detailed account of the alleged supplies made to the defendants and how the outstanding liability to the tune of Rs. 5,96,947.22 paise as balance principal invoice amount has been worked out. Counsel has not submitted that the affidavit tendered by one of the plaintiffs in his examination in chief is at variance with the averments raised in the plaint. It is also not the plea that at the time of filing of written statement, they were not in possession of their account books wherein the payments/adjustments made towards supplies received from the plaintiffs are reflected. Counsel is not in a position to convince as to how something new has emerged from the affidavit filed by way of examination in chief in order to satisfy that the facts to be pleaded by way of amendment could not be raised before commencement of the trial albeit exercise of due diligence. In this view of the matter, I find force in contention of the respondents that the application filed by the defendants does not satisfy the requirements of proviso to Rule 17 CPC and thus has been rightly dismissed by the trial court.

For the foregoing reasons, finding no merit, the petition is

dismissed. No order as to costs.

(Rekha Mittal)
Judge

16.3.2016

PARAMJIT