

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25 .01.2017

Delivered on : 03.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A No.6579 of 2016 in CS No.472 of 2011

M/s.A.E.Logistics (Pvt) Ltd.,
rep. by its Director,
Door No.125, New No.10,
First Floor, G.N.Chetty Road,
T.Nagar, Chennai - 600 017. .. Applicant

vs.

Kwik Patch Ltd. (Unit 1)
Represented by its Chief Operating Officer/
Authorised Signatory Mr.T.Ravi
SSR Godown, Amanambakkam Road,
Vallam, Chengalpet - 603 002. Respondent

Prayer : Application filed under Order XIV Rule 8 of
Original Side Rules 1956 read with Order VI Rule 17 CPC
seeking to amend the counter claim made by the applicant in
its written statement as Rs.20,20,634/- instead of
Rs.4,21,729/-.

For Applicant : Mr.C.Ramesh

For Respondent : Mr.K.K.Muralidharan

O R D E R

This application is filed to amend the counter claim
made by the applicant as a sum of Rs.20,20,634/- instead of

Rs.4,21,729/-.

2. The brief case of the applicants is as follows :

Though the plaintiff has filed the suit for recovery of a sum of Rs.29.99,510.93 with interest at the rate of 18% per annum from the date of the suit till the date of realisation, it is the case of the applicant that they have already sent a letter to the plaintiff on 14.11.2011 stating that three shipments were pending for Customs clearance and the same cannot be cleared in view of nonpayment by the respondent/plaintiff. The applicant provided service to M/s.Sports Glove India Limited for despatching the goods to and from national and international destinations. The outstanding amount due in the account of M/s.Sports Glove India Limited is a sum of Rs.15,98,635/-. When the matter stood thus, the applicant received an email dated 23.06.2009 from Ms.Devi, Officer Commercial of the respondent company informing the applicant that with effect from July 2009 M/s.Sports Glove India Limited has been changed to M/s.Kwik Patch Limited. It was further informed that except the change of name everything would be the same. However, the said M/s.Sports Glove India Limited did not care to settle the dues, though they have availed the services. The applicant has been calling upon the plaintiffs as well as M/s.Sports Glove India Limited to clear the outstanding dues. But they have failed to do so. Therefore, the applicant has sent a notice to the respondent on 22.12.2010 claiming a sum of Rs.15,98,635/- on account of M/s.Sports Glove India Limited and claiming a sum of Rs.2,87,570/- from M/s.Kwik Patch

Limited account. The respondent denying his liability sent a reply stating that the M/s.Sports Glove India Limited is a different company and therefore, they are not answerable to the due of the said company. It is the case of the applicant that directors of the plaintiff company are also the directors of M/s.Sports Glove India Limited which owes a sum of Rs.15,98,635/-. Whereas the applicant has claimed only a sum of Rs.4,21,729/- as a counter claim. Due to inadvertence a sum of Rs.15,98,635/- was not added in the prayer portion while claiming counter claim. Hence prayed for amendment to amend the counter claim amount made by the applicant in his written statement as Rs.20,20,364/- instead of Rs.4,21,729/-.

3. Brief contentions of the counter filed by the respondent is as follows:

The counter claim of the applicant is arising out of the transaction between themselves and no third party right or obligation is involved for decision of the suit. The gamut of allegation is against one M/s.Sports Glove India Limited. The monetary claim sought to be introduced by way of present application is not arising out of the transactions with the respondent/plaintiff. If the applicant has any lawful claim against the said M/s.Sports Glove India Ltd, they have to initiate proceedings against such company for recovery of the alleged dues. The

as a defence for the claim of the plaintiff. Hence, prayed for dismissal of the applicant.

4. The learned counsel for the applicant submitted that M/s.Sports Glove India Limited has been changed as M/s.kwik Patch Limited. Admittedly the said M/s.Sports Glove India Limited owe a sum of Rs.15,98,635/-. Therefore, the above amount has also to be included in the counter claim. The counter claim has been claimed only for Rs.4,21,729/-. Except the change of figure in the counter claim, no other facts are raised in the amendment. Therefore, I prayed for allowing the application. The learned counsel also relied on the email sent by Mrs.Devi, Officer Commercial. In support of his contentions and he also relied on the judgments of the Honourable Apex Court reported in **2004(13) SCC 432 (Pradeep Singhvi and another Vs. Heero Dhankani and others)** and **2000(6) SCC 498 (Baldev Singh and others Vs Manohar Singh and another)**.

5. It is the contention of the learned counsel for the respondent that the entire suit is based on the transaction between the plaintiff and the defendant and M/s.Sports Glove India Limited is a different company and no way connected to the respondent company. Even in the notice dated 09.02.2011 sent by the applicant, they have claimed only a sum of Rs.4,21,729/- from the respondent. The alleged allegation that the two companies have been merged has not been established. No merger has been proved and no

other documents have been filed by the applicant. The plaintiff company is a different company and the alleged due of a different company cannot be claimed in the present suit as against the respondent in a counter claim. Hence, prayed for dismissal of the application.

6. In the light of the above submissions, now the point arises for consideration is

Whether the amendment to include the additional amount as a counter claim is maintainable?

7. Perused the records. The suit has been filed for recovery of the amount based on the loss sustained by the plaintiff due to withholding of the consignments sent by the plaintiff. P.W.1 was examined and exhibits have also been marked. Elaborate cross examination has also been done by the defendant. Now this application has been filed by the applicant/defendant to amend the amount claimed in the counter claim in the written statement.

8. The main contention of the applicant that M/s.Sports Glove India Limited owe a sum of Rs.15,98,635/- to the applicant herein and the said company has been merged with the plaintiff company. Therefore, the plaintiff is liable to pay that amount to the defendant. Therefore, the amendment in the counter claim including the above amount is absolutely necessary. The applicant relied

upon the e-mail sent by officer commercial of the respondent company indicating that the name of M/s.Sports

Glove India Limited will be changed as Kwik Patch Limited. So it is the contention of the learned counsel for the applicant that M/s.Sports Glove India Limited also merged with the plaintiff company, therefore, the plaintiff is liable to pay the amount and hence, the the amount claimed in counter claim has to be amended.

9. On going through the copy of the e-mail, it is seen that the said email has been sent by one Ms.Devi, who is the Officer Commercial and the same has been sent to one Habib, Madras and the letter has been addressed to various persons. The email shows as if they are going to change their company name as M/s.kwik Patch Limited and rest everything is same and it will be with effect from July 2009. The email clearly indicate that there was only proposal to change the name. From the above email, it cannot be concluded that M/s.Sports Glove India Limited has changed as Kwik Patch Limited. Where as, it is the specific contention of the respondent that M/s.Sports Glove India Limited is a different entity and if really the two companies have been merged, the applicant could have filed a better proof available in the Registrar of Companies. But the applicant has not filed any other documents. It is the definite case of the applicant that M/s.Sports Glove India Limited owe a sum of Rs.15,98,635/- to the applicant. That being the case, without proving the merging of M/s.Sports Glove India Limited with the present respondent company, the amount already due from the said M/s.Sports

Glove India Limited cannot be clubbed against the respondent. It is for the applicant to file a suit against the said M/s.Sports Glove India Limited for recovery of that amount.

10. In the absence of any evidence to show that the said M/s.Sports Glove India Limited has merged with the respondent company or the respondent company has taken up the said company with all liabilities, the amount allegedly due from that company, namely, M/s.Sports Glove India Limited cannot be recovered from the plaintiff. Therefore, this Court is of the view that the amendment sought by the applicant will not serve any purpose. Of course, the judgments relied upon by the applicant deals with the amendment of the written statement and it has been held that inconsistent defence can be raised in the written statement although the same may not be permissible in case of the plaint. Similarly, the amendment neither drastically alter the nature of defence nor withdrawing admission and such amendments are normally permitted. The decisions and the principles set out in the judgments relied upon by the applicant will not be applicable for the facts of the present case for the simple reason that the applicant is trying to claim the amount due from a different company from the plaintiff herein by way of a counter claim. In the absence of any evidence to show that both the companies are merged, the amendment cannot be maintainable at this stage, that too after the trial is

half way through. The application deserves to be dismissed.

11. In the result, this application is dismissed.

12. Post the suit before the Master for continuation of evidence.

Sd/.N.S.K.J

03.02.2017

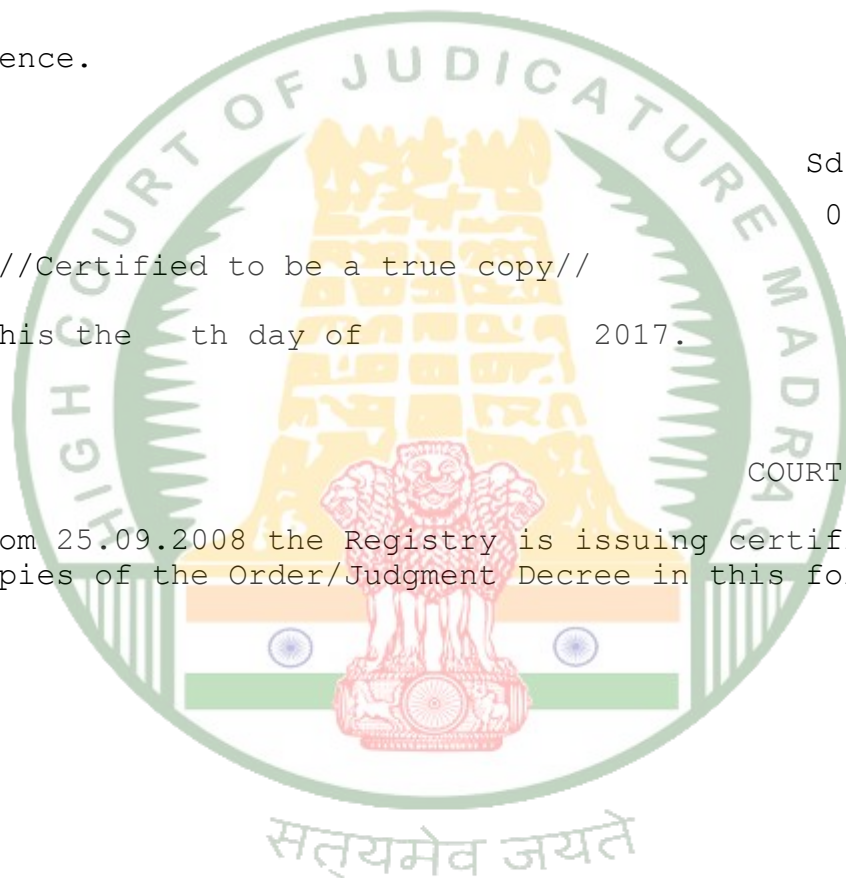
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Dated this the th day of 2017.

MD

COURT OFFICER

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