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

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Date of Decision: May 18, 2017

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CM(M) No.330/2017

M/S SRIRAM COMPOUNDS PVT LTD
(EARLIER KNOWN AS SRIRAM COMPOUNDS) Petitioner
Through: Mr.H.K.Chaturvedi, Advocate

versus

VINOD MITTAL (PROPRIETOR OF
M/S GLOBE GENERAL INDUSTRIES) Respondent
Through: Mr.Avadh Kaushik, Advocate

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

JUDGMENT (Oral)

CM(M) 330/2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India feeling aggrieved by the order dated 20th January, 2017 whereby the application filed by him seeking amendment of the written statement has been dismissed by learned Trial Court.
2. Learned counsel for the petitioner has submitted that the Civil Suit No.594430/16 (549/14) was filed by the respondent/plaintiff for recovery of sum of Rs.56,977/- together with costs and interests towards the balance price of goods lift. The costs of lift was claimed to be Rs.2,13,200/- out of which a sum of Rs.1,65,000/- was paid and for the balance sum of

Rs.50,200/-, the civil suit was filed.

3. In the written statement the petitioner/defendant took preliminary objections, replied the paras on merits and also raised a counter claim for a sum of Rs.9,13,100/- in para 30 of the written statement. The Court fee on counter claim of Rs.9,13,100/- was paid in terms of order of learned Trial Court dated 20th April, 2013. The pecuniary jurisdiction of learned Civil Judge being to Rs.3,00,000/-, although the Civil Suit No.594430/2016 (Old No.549/14) was instituted against M/s. Sri Ram Compounds and since the constitution of the firm was changed to that of a Private Limited company, the Director of the defendant Company restricted the counter claim to Rs.3,00,000/- by making statement to this effect before learned Trial Court.

4. Thereafter, the application under Order VI Rule 17 CPC was filed seeking the following amendments:-

“Para 1: That M/s Sriram Compounds Pvt. Ltd. (Earlier known as M/s Sriram Compounds situated at C-15 & 16, Sector-63, Noida U.P. hereinafter referred to as defendant was a proprietorship concern duly registered under the Act & enactment of the Companies Act, 1956 and also Rules made thereunder.) is a Private Limited Company incorporated under the provisions of Companies Act, 1956 having its registered office at A-15, Flatted Factory Complex, Okhla-New Delhi. Ms.Sharmistha Sharma is a authorized director on behalf of defendant company to prosecute present case before this Hon’ble Court as per Board authorization.

Para 30: That the total cost of business losses as well as mental, physical, financial, defamation and legal expenses comes to Rs.3,00,000/- (Rupees Three Lakhs) for which the plaintiff is not ready to answer due to malafide intention and to get some ulterior motive. The Counter Claimant Claims the same.”

5. Learned counsel for the Trial Court did not allow the amendment to bring on record the change in the constitution of the defendant firm by amending para 1 of the written statement. The prayer to amend para 30 in respect of the counter claim was also declined observing that in the written statement no basis of the counter claim was made and it has not been separately registered.

6. The learned counsel for the respondent/plaintiff has submitted that he has no objection if the petitioner/defendant is allowed to amend para no.1 of the written statement with regard to change in constitution of the defendant firm i.e. from proprietorship firm to a private limited company incorporated under the Companies Act, 1956.

7. While adopting the reasoning given by the learned Trial Court in the impugned order while declining amendment in para 30 of the written statement, learned counsel or the respondent/plaintiff has submitted that this Court should not interfere with the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

8. I have considered the submission made on behalf of the parties and carefully gone through the record.

9. The learned Trial Court while dismissing the application under Order VI Rule 17 CPC failed to take note of the following facts:-

- (i) The amendment in para 1 was necessitated due to change in constitution of the defendant firm i.e. from proprietorship firm to a Private Ltd. Company, which was a subsequent event.
- (ii) When the written statement was filed in the year 2006, counter claim was pleaded in para no.30 of the written statement as under:-

“30. That the total costs of business losses as well as mental, physical, financial, defamation and legal expenses comes to Rs.9,13,100/- for which the plaintiff is not ready to answer due to the malafide intention and to get some ulterior motive.”

- (iii) The Court fee on the counter claim was paid as per order of the Court.
- (iv) The defendant/counter claimant had no role to play so far as registration of counter claim was concerned as the counter claimant was only required to pay the requisite Court fee and thereafter directions for registration of the counter claim was to be issued by the learned Trial Court.

10. While dismissing the application under Order VI Rule 17 CPC, the learned Trial Court did not consider that except reduction of the claim towards damages, no other change was sought by way of amendment.

11. Order VI Rule 17 CPC stands amended vide Civil Procedure Code (Amendment Act), 2002. The provision to Order VI Rule 17 CPC (after amendment) reads as under:-

‘Order VI Rule 17.

Rule 17. Amendment of Pleadings : *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

12. The power to allow the amendment is wide and can be exercised at any stage of proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hyper technical

approach. (Rel. 2000 1 SCC 712)

13. Legal position is well settled that power under Article 227 of Constitution of India which vests extra ordinary jurisdiction in this Court, needs to be exercised only in a case where the impugned order suffer from any illegality, irregularity or perversity and if the impugned order is not interfered with, a grave injustice would be caused.

14. Since the proposed amendment which are nothing except to bring on record the change in the constitution of the defendant firm and amendment in para 30 to incorporate the counter claim to the restricted amount i.e. Rs.3,00,000/-, the impugned order by learned Trial Court is based against all the settled principles governing law of amendment.

15. Having noted above the nature of the amendments which is sought in the written statement, it would be noted that the amendment in para 30 of the written statement is only clarificatory in nature in respect of the amount of damages claimed. Such amendments which are directed towards putting forth and seeking determination of the real question in controversy between the parties are permitted under the law.

16. The impugned order, therefore, is not tenable and is hereby set aside.

17. The petitioner/defendant is allowed to make amendment in paras No.1 and 30 of the written statement which have been necessitated in view of the fact that the proprietorship concern is now a Private Ltd. Company and the amendment sought in the prayer clause is just to reduce the amount of damages upto Rs.3 lacs.

18. The above amendments are allowed without any order as to cost as in view of the nature of the amendment sought, it should not have been declined by the learned Trial Court as by claiming a lesser amount towards damages, the petitioner/defendant was reducing his claim towards damages

which does not have the effect of causing any kind of prejudice to the respondent/plaintiff so as to compensate him by awarding cost.

19. With above observations, the petition is allowed.

20. A copy of this order be sent to the concerned Court for information and be also given dasti to learned counsel for the parties.

CM No.11361/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 18, 2017

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