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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CM(M) No.18/2012
VALVOLINE CUMMINS LTD Petitioner
Through: Mr. P.D. Gupta, Sr. Adv. with Mr.
Sahil Chopra, Adv.
versus
GURU MEHAR CONSTRUCTION PVT
LTD & ORS Respondents
Through: Mr. Vijay Sharma and Ms. Swagati,
Advs.
AND
+ CM(M) No.904/2012 & CM No.13862/2012 (for stay).
VALVOLINE COMMINS LTD Petitioner
Through: Mr. P.D. Gupta, Sr. Adv. with Mr.
Sahil Chopra, Adv.
versus
GURU MEHAR CONSTRUCTION PVT LTD
& ORS Respondents
Through: Mr. Vijay Sharma and Ms. Swagati,
Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.08.2017**

1. These petitions, both under Article 227 of the Constitution of India, impugn the orders dated 1st October, 2011 and 30th May, 2012 respectively in CS No.328/10 of the Court of Additional District Judge-04, South District, New Delhi.
2. The petitions were entertained and notice thereof issued and the counsel for the respondents has been appearing. Vide order dated 14th August, 2012 in CM(M) No.904/2012 and which continues to be in force, the disposal of the suit was stayed.

3. The counsels have been heard.
4. Vide order dated 1st October, 2011 impugned in CM(M) No.18/2012, the application of the petitioner / plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint was dismissed. Vide order dated 30th May, 2012 in CM(M) No.904/2012, evidence of the petitioner / plaintiff was closed.
5. The petitioner / plaintiff instituted the suit from which these petitions arise for recovery of price of goods claimed to be sold, supplied and delivered to the respondent / defendant no.1 M/s. Guru Mehar Construction Private Limited from the said M/s. Guru Mehar Construction Private Limited and Bir Singh Atwal, Narinder Singh Atwal, Fateh Singh Atwal and U. Kumar impleaded as defendants no.2 to 5 to the suit as Directors of defendant no.1 Guru Mehar Construction Private Limited.
6. The defendants, in their written statement pleaded that the transactions of the petitioner / plaintiff were with M/s. Guru Mehar Construction, a proprietary concern of defendant no.3 Narinder Singh Atwal and not with defendant no.1 M/s. Guru Mehar Construction Private Limited.
7. This led to the filing of the application by the petitioner / plaintiff under Order VI Rule 17 of the CPC to amend the plaint, to plead so and to confine the suit for recovery of monies only against the said Narinder Singh Atwal and to give up the other defendants in the suit.
8. The said application has been dismissed vide impugned order dated 1st October, 2011 reasoning that (i) allowing the amendment would practically result in a new suit having been filed against the defendant no.3 Narinder Singh Atwal only and that too not in the capacity of Director of defendant

no.1 M/s. Guru Mehar Construction Private Limited but as a proprietor of M/s Guru Mehar Construction and which would also be barred by time, computed backwards from the date when the application for amendment was filed; (ii) there was no merit in the plea of the petitioner / plaintiff having got confused owing to having had transactions with both, M/s. Guru Mehar Construction and M/s. Guru Mehar Construction Private Limited, as all the documents filed with the plaint and on which the suit claim was based were with M/s. Guru Mehar Construction and not with M/s. Guru Mehar Construction Private Limited; and, (iii) since the amendment would result in change in the nature of the suit, it could not be allowed.

9. I have enquired from the counsel for the respondents / defendants that Narinder Singh Atwal being a defendant since before the filing of the application under Order VI Rule 17 of the CPC, would not claim against him by way of amendment as proprietor, be merely a case of mis-description or filing of a suit in a wrong name and which has consistently been held by the Supreme Court in ***Chief Conservator of Forests, Govt. of A.P. Vs. Collector*** (2003) 3 SCC 472 and ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon*** (1969) 1 SCC 869 to be a case of irregularity and not fatal to the suit.

10. The counsel for the respondents / defendants has contended that Narinder Singh Atwal (who has since died and has been substituted in these petitions by his legal heirs) was sued earlier in his capacity as a Director and not as proprietor and it would not be a case of irregularity but as rightly held by the learned Additional District Judge, a case of institution of the suit *de novo* against Narinder Singh Atwal.

11. In the light of the judgments already cited which deal with diverse akin situations I entertain no doubt.

12. The settled principle of law as recently reiterated by the Supreme Court in *Rajesh Kumar Aggarwal Vs. K.K. Modi* (2006) 4 SCC 385 is that, the Court, at the stage of considering the application for amendment, is not to go into the merits of the amendment. The plea on which the amendment has been denied is such, on which at this stage it cannot be said whether the claim against Narinder Singh Atwal on the date of amendment would be barred by time or not. It is thus deemed appropriate that while allowing the amendment, the said question is left open for adjudication, if raised by the respondents / defendants in the written statement to the amended plaint.

13. I may however notice the arguments in this context. While the counsel for the respondents / defendants contended that the observations in the impugned order dated 1st October, 2011 are qua the bar of limitation to the application for amendment and not qua the claim in the suit, the senior counsel for the petitioner / plaintiff has contended that even on the date of filing of the application for amendment, the suit claim against Narinder Singh Atwal was within time.

14. In view of what has been observed hereinabove, it is not deemed appropriate to deal with the aforesaid contentions in this order.

15. Needless to state that once the impugned order dated 1st October, 2011 is set aside, axiomatically the impugned order dated 30th May, 2012 would also stand re-called inasmuch as fresh opportunities will have to be given after the amended pleadings have come on record.

16. The petitions are accordingly disposed of directing that:-
- (a) the impugned orders dated 1st October, 2011 and 30th May, 2012 are set aside;
 - (b) the application of the petitioner / plaintiff for amendment of the plaint is allowed;
 - (c) the plea of limitation as aforesaid is left open; and,
 - (d) after the completion of the amended pleadings and framing of additional issues / re-framing of issues if any, the suit be listed for evidence in accordance with law.
17. The counsel for the respondents / defendants at this stage states that before the Suit Court, the substitution of the heirs of Narinder Singh Atwal has not been effected as yet.
18. It is clarified that this order will have no bearing on the outcome of the substitution of legal heirs of Narinder Singh Atwal in the suit.
- No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 31, 2017

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