

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

% **Date of decision: 21st July, 2017**

+ **C.R.P. No.159/2017, CM No.25518/2017 (for stay) and CM No.25519/2017 (for condonation of five days delay in filing)**

ASHIANA ISPAT LIMITED **Petitioner**

Through: Mr. Arvind Kumar Srivastava,
Adv.

Versus

D S BAKSHI **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.25517/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. No.159/2017, CM No.25518/2017 (for stay) and CM No.25519/2017 (for condonation of five days delay in filing).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 12th January, 2017 in Suit No.405/2015 (New No.11669/2016) of the Court of Additional District Judge-08 (Central), Tis Hazari Courts, Delhi] dismissing the application of the petitioner / defendant under Order VIII Rule 9 of the CPC.

4. The counsel for the petitioner / defendant has been heard.

5. The suit from which this petition arises has been filed by the respondent / plaintiff against the petitioner / defendant for recovery of Rs.5,93,640/- towards price of goods sold, supplied and delivered by

the respondent / plaintiff to the petitioner / defendant and for mandatory injunction directing the petitioner / defendant to issue C-Forms of the said transaction.

6. The petitioner / defendant contested the suit by filing a written statement.

7. On 23rd August, 2012, issues were framed in the suit.

8. The respondent / plaintiff closed his evidence on 3rd September, 2014 and the petitioner / defendant filed the affidavit by way of examination-in-chief of its witness on 13th January, 2015 but instead of tendering the same in evidence, took adjournment to file an application to file additional documents.

9. At that stage, the petitioner / defendant filed additional written statement under Order VIII Rule 9 of the CPC and against the rejection whereof this petition has been filed, pleading (i) that the petitioner / defendant had rejected and returned the goods (for price whereof suit was filed) to the respondent / plaintiff as the same were not as per the required specification; (ii) that the said goods were returned by a truck; (iii) that the truck carrying the said goods broke down and the goods were shifted to another truck; (iv) that the respondent / plaintiff dispatched same / similar goods to M/s Ujjwal Biotechnologies, 870/9 Sanjay Marg, South Bhopa Road, Mujaffar Nagar, Uttar Pradesh; (v) “thus, it is crystal clear that the truck no. UP 15 M 3417 of Sai Transport Co. had been first used by the defendant for return of goods to the plaintiff and thereafter the plaintiff had used the same truck for dispatch of the same / similar goods to M/s.

Ujjawal Biotechnologies”; (vi) the use of the same truck shows return of the goods of which price was claimed in the suit, by the petitioner / defendant to the respondent / plaintiff; (vii) that the petitioner / defendant was not in knowledge of the said documents when it had filed earlier documents with its written statement and issues were framed; and, (viii) that the petitioner / defendant had since obtained photocopies of the aforesaid documents and the originals are in possession of M/s. Ujjawal Biotechnologies.

10. The learned Additional District Judge refused to take the additional written statement on record reasoning (i) that the goods claimed to be returned by the petitioner / defendant could not be matched with the goods supplied by the respondent / plaintiff to M/s. Ujjawal Biotechnologies and as per the documents filed by the petitioner / defendant also, the specification and quantity of the goods were different and it thus cannot be presumed that the respondent / plaintiff supplied the same goods to M/s. Ujjawal Biotechnologies as it had received from the petitioner / defendant; (ii) that the petitioner / defendant could not connect the supply of goods to M/s. Ujjawal Biotechnologies with the goods as claimed to be returned by the petitioner / defendant to the respondent / plaintiff; and, (iii) that the respondent / plaintiff had already completed his evidence and the petitioner / defendant had also filed affidavit of evidence of its witnesses and at that belated stage the additional written statement could not be taken on record.

11. I have at the outset enquired from the counsel for the petitioner / defendant as to how Revision Petition under Section 115 of the CPC is maintainable. The proviso to sub Section (1) of Section 115 of the CPC, inserted with effect from the amendment of the CPC of the year 1999, bars this Court from thereunder varying or reversing any order or “any order made, or any order deciding an issue, in the course of the suit or other proceeding, except where the order, if had been made in favour of the party applying for revision, would have finally disposed of the suit”. The additional written statement filed by the petitioner / defendant, even if had been taken on record, would not have resulted in disposal of the suit. The Revision Petition is thus totally misconceived.

12. Needless to state the counsel for the petitioner / defendant has no reply.

13. Be that as it may, even otherwise finding the filing of additional written statement by the petitioner / defendant to be totally misconceived, rather than dismissing this petition on the aforesaid ground and which is likely to result in the petitioner / defendant filing a petition under Article 227 of the Constitution of India, the counsel for the petitioner / defendant has been asked to argue on merits.

14. I have enquired from the counsel for the petitioner / defendant whether Order VIII Rule 9 of the CPC which is as under:-

“9. Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as

the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same”.

can be used to nullify the proviso added to Order VI Rule 17 of the CPC to the effect that, “no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of trial.”

15. The only response of the counsel for the petitioner / defendant is that Order VIII Rule 9 supra permits the Court to, at any time take additional written statement to be taken on record.

16. I am unable to agree.

17. Grant of leave to present additional written statement under Order VIII Rule 9 is unfettered by any restrictions as in the proviso and which claim cannot be permitted to be taken by way of amendment owing to the limitations in the proviso.

18. The legislative intent in the amendment of the year 2002 by inserting a proviso to Order VI Rule 17 of the CPC cannot be permitted to be defeated by doing under Order VIII Rule 9 of the CPC what is restricted under Order VI Rule 17 of the CPC.

19. Order VIII Rule 9 of the CPC prohibits pleadings subsequent to the written statement but entitles the Court to permit a party to either apply to the Court for filing additional written statement or entitles the

Court to require a additional written statement “from any of the parties”. It is under the said provision that the practice of filing the replication as prevalent in Delhi and which is not so in some other States, is permissible in law. In the absence of the latter part of Order VIII Rule 9 of the CPC, there would have been no scope for a replication to a written statement. Reference in this regard can be made to plethora of case law discussed by me in this regard in ***Dabur India Ltd. Vs. Alka Ayurvedic Pvt. Ltd.*** 2017 SCC OnLine Del 7268 and in addition, to ***M.L. Gupta Vs. Kripal Singh*** 98 (2002) DLT 683.

20. Order VIII Rule 9 of CPC can also be used to bring on record, subsequent events when relevant to the adjudication of lis, as held in ***Venture Global Engineering Vs. Satyam Computer Services Limited*** (2010) 8 SCC 660 or to allow the defendants who have already filed the written statement, to file additional written statement after a new petitioner or defendant is added to the suit or to allow a minor defendant to file additional written statement on attaining majority.

21. Yet another situation in which Order VIII Rule 9 of the CPC is used is, upon finding the plaintiff, in replication, to have pleaded facts different from those in the plaint and which for that reason had remained to be answered by the defendant in the written statement, to permit the defendant to file an additional written statement qua those.

22. The scope of the second part of Order VIII Rule 9 of the CPC thus cannot be permitted to conflict with Order VI Rule 17 of the CPC which permits amendment of pleadings and the two provisions have to be read harmoniously.

23. What the petitioner / defendant here was wanting to do was to, by way of additional written statement under Order VIII Rule 9 of CPC amend its written statement and to, in the garb of said additional written statement, file documents which were not filed at appropriate stage.

24. I may in this regard also notice that though the learned Additional District Judge has treated the additional written statement filed by the petitioner / defendant as an application for leave to file additional written statement but in fact the document annexed to this petition is the additional written statement filed without leave of the Court.

25. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2017

‘pp’..

(corrected & released on 28th September, 2017)