

\$~58

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 802/2017
RAJESH KUMAR MEHLAWAT Petitioner
Through: Mr. Pranay Trivedi, Adv.

Versus

NARESH GUPTA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **31.07.2017**

CM(A) No.27011/2017 (for exemption)

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

CM(M) No.802/2017 & CM(A) 27010/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 20th May, 2017 in Civil Suit No.516008/2016 of the Court of Additional District Judge-03, South-West District, Dwarka Courts, New Delhi) allowing the application of the respondent/plaintiff under Order 6 Rule 17 of the CPC and dismissing the application of the petitioner /defendant under Order 7 Rule 11 CPC
4. Though in the memorandum of the petition the thrust of the counsel for the petitioner/defendant is that the application under Order 6 Rule 17 should not have been considered when the arguments on the application under Order 7 Rule 11 had been heard but the

counsel for the petitioner/defendant agrees that the settled principle of law is that an application under Order 6 Rule 17 even if filed after an application under Order 7 Rule 11 or before the order on the application under Order 7 Rule 11 of CPC is pronounced, has to be considered first.

2. The counsel for the petitioner/defendant started by contending that even the amended plaint does not disclose any cause of action. Attention is drawn to paras 5 to 8 of the plaint wherein the respondent/plaintiff has pleaded that the petitioner/defendant used to purchase material from the respondent/plaintiff from time to time and the respondent/plaintiff also used to purchase material from the petitioner/defendant; that the respondent/plaintiff gave loan to the petitioner/defendant which has been only partly paid; that both the parties were maintaining their yearly books and that the petitioner/defendant has not paid the outstanding amount inspite of repeated requests.

3. Attention is next invited to para 11 of the plaint qua the cause of action and it is argued that though the suit claim is based on the loan but in para 11, the reference is to the dates of supply of goods. It is thus contended that the plaint does not disclose any cause of action for recovery of the loan amount.

4. Though certainly the plaint is not properly worded but the principle of mofussil pleading as enunciated in *Kidar Lall Seal vs. Hari Lall Seal* AIR 1952 SC 47, *Devasahayam (D) by LRs Vs. P. Savithramma* (2005) 7 SCC 653, *Narain Prasad Aggarwal Vs. State of M.P.* (2007) 11 SCC 736, *Des Raj Vs. Bhagat Ram (Dead) by*

LRs (2007) 9 SCC 641, *Teva Pharmaceutical Industries Ltd Vs. Natco Pharma Ltd.* 210 (2014) DLT 591 (DB), and *Rajesh Kumar @ Ramu Vs. Sunil Kumar* 2016 SCC OnLine Del 2982 will apply. The claim of the litigant cannot be thrown out at a threshold owing to the incapability of the counsel for the respondent/plaintiff in drafting in English language.

5. In para 11 of the plaint, though the reference is to the dates when the respondent/plaintiff claims to have supplied goods to the petitioner/defendant but in the subsequent paragraph it is also stated “the cause of action further arose on 16/2/2015 when the plaintiff asked the defendant to clear the outstanding dues as per statement of accounts”.

6. All the said questions have to be subject to trial and cannot be a ground for throwing out of the plaint at the threshold.

7. The counsel for the petitioner then states that the documents filed by the respondent/plaintiff are also of a sale of goods.

8. A detailed enquiry cannot be conducted at this stage.

9. Though the counsel for the petitioner/defendant has argued that even the amended plaint is liable to be rejected, but after the filing of amended plaint did not file any application under Order 7 Rule 11 of the CPC. The earlier application filed by the petitioner/defendant under Order 7 Rule 11 of the CPC was dismissed axiomatically on the application of the respondent/plaintiff under Order 6 Rule 17 being allowed. For this reason also it is not open to the petitioner to contend before this Court that even as per the amended plaint there is no cause of action.

10. Though the counsel for the petitioner/defendant has not argued anything qua the order allowing the application of amendment, but the counsel contends that application for amendment of the plaint was filed after the affidavit by way of examination in chief of respondent / plaintiff had been tendered in evidence though cross examination had not commenced.

11. The impugned order however records that the amendment sought by the respondent/plaintiff are clarificatory only and which is found to be correct.

No ground for interference is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

JULY 31, 2017
M..