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

+ FAO(OS) 242/2017 and CM No.31227/2017

% Date of decision : 12th September, 2017

SUPRIO MUKHERJEE Appellant
Through : Mr. Saurabh Prakash and Mr.
Kunal Gosain, Advs.

versus

BCD ELECTRIC LTD Respondent
Through : Mr. Gauhar Mirza and
Mr. Shivang Singh, Advs.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant assails an order dated 16th August, 2017 whereby I.A.No.2566/2017, filed by the appellant under Order VI Rule 16 and Order VIII Rule 10 read with Section 151 of the CPC in CS(OS)No.577/2016, was dismissed.
2. It is submitted that the pleadings necessary for consideration of this appeal are already on record and consequently, with the consent of counsels for both sides, we have taken up this appeal for consideration.

3. The appellant along with Pradeep Mehra and Dibyendyu Bhattacharjee as co-plaintiffs, filed CS(OS)No.1856/2015 against its employers seeking declaration of recovery of money on issues relating to their employment with the respondent as the sole defendant.

4. The record placed before us shows that by an order dated 19th September, 2016, the Id. Single Judge accepted an application being I.A.No.3600/2016, which was filed by the respondent herein, under Order VII Rule 11 of the CPC seeking rejection of the plaint essentially on the ground that there was misjoinder of parties (plaintiffs) as well as causes of action by the plaintiffs inasmuch as each of the plaintiffs had independent causes of action against it. The Id. Single Judge applied provisions of Rule 8 of Order II of the C.P.C. and issued the following directions :

“(a) An application will be filed seeking to amend the plaint in the present suit so as to re-cast it as a suit by Plaintiff No.1. The reliefs in respect of which court fees has been paid have already been set out in the prayer.

(b) two fresh suits be filed: one, in respect of the claim of Plaintiff No.2 and another in respect of claim of Plaintiff No.3.”

5. So far as court fees was concerned, the appellant/plaintiff was exempted from payment of separate court fees inasmuch as the composite court fees on the claims of the three plaintiffs stood affixed on the plaint in CS(OS)No.1856/2015.

6. In purported compliance with this order, the appellant herein filed CS(OS)No.577/2016.

7. The respondent herein filed a written statement which was objected to by the plaintiff by way of an application being I.A.No.2566/2017 under Order VI Rule 16 and Order VIII Rule 10 read with Section 151 of the CPC. It was contended by the appellant/plaintiff that a voluminous written statement urging pleas which had not been taken up before and contrary to the stand in the written statement filed in CS(OS)No.1856/2015 had been taken up by the defendant. This application was considered by the Id. Single Judge and came to be rejected by the order dated 16th August, 2017. The Id. Single Judge did not take a view on the objection of the appellant but merely stated that the grounds on which the application rested were insufficient to reject the written statement filed by the defendants. Liberty was given to the appellant to take its pleas in its response to the written statement by way of a replication.

Aggrieved by this order, the present appeal has been filed.

8. Before us Mr. Saurabh Prakash, Id. counsel for the appellant primarily relies on the provisions of Rule 7 of Order VI of the CPC which mandates that *“No pleadings shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.”*.

9. Id. counsel for the appellant has drawn our attention to the tabulated summarization compiled by it of the written statement dated 2nd November, 2015 in CS(OS)No.1856/2015 and the written statement filed to the plaint by the respondent in the new suit being CS(OS)No.577/2016. We have also carefully heard Id. counsel for the

appellant as well as examined this extract prepared by him.

10. On a comparison of the two written statements, in the written statement in CS(OS)No.577/2016, the defendant has merely taken additional pleas which are in the nature of explanations and objections premised on factual assertions already made by the respondent in its earlier written statement. The appellant is objecting also to mere summarization by the respondent of the effect of the documents which admittedly stand placed on record in the earlier suit. No new ground of claim or allegation of fact inconsistent with the previous pleading of the respondent appears to have been made by the respondent.

11. In view of the above, we are unable to agree with Id. counsel for the appellant on the objections to the pleadings in the written statement in CS(OS)No.577/2016 which have been raised by him.

12. Mr. Gauhar Mirza, Id. counsel for the respondent has additionally pointed out that the appellant took no objection when the written statement was first filed.

13. Id. counsel for the respondent has also pointed out that in view of the order dated 19th September, 2016 of the Id. Single Judge, the appellant was directed to file a fresh suit and he has filed a fresh plaint. This plaint has been separately registered as a suit and a fresh number was assigned to it. As such, it was open to the defendant, who was filing a fresh written statement, to take all pleas as are available to him in law.

14. Inasmuch as we are unable to find any merit in the submission of Id. counsel for the appellant that the pleas in the written statement are in the teeth of the prohibitions under Rule 7 of Order VI of the

CPC, we are not inclined to consider these objections raised by the respondent to this appeal.

15. It is made clear that so far as the prior pleadings of the respondent are concerned, all consequences in law are available to the plaintiff on the basis of admissions made or stand taken therein.

16. We are informed that the suit is fixed for framing of issues on 20th September, 2017.

17. We accept the request of ld. counsel for the appellant for extension of time to file a replication which request is not opposed by ld. counsel for the respondent. The period for filing a replication by ld. counsel for the appellant is therefore extended by six weeks from today. The date of 20th September, 2017, already fixed for framing of issues, shall consequently stand extended.

18. This appeal is dismissed in the above terms.

In view of the dismissal of the appeal, the pending application does not survive for adjudication which is accordingly dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 12, 2017

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