

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 5th September, 2017.

+ TR.P.(C.) 146/2017

DIGICALL GLOBAL PVT LTD Petitioner

Through: Mr. Vishesh Issar and Mr. Varun
Sharma, Advs.

Versus

BLS INTERNATIONAL SERVICES LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.32352/2017 (for exemption)

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

TR.P.(C.) 146/2017 & CM No.32351/2017 (for stay)

3. This petition under Section 24 of the Code of Civil Procedure, 1908 (CPC) seeks transfer to this Court of CS No.11152/2016 titled ***Digicall Global Pvt. Ltd. Vs. BLS International Services Ltd.*** of the Court of Sh. Girish Kathpalia, District & Sessions Judge, South East, Saket Courts, New Delhi to this Court for trial along with CS(OS) No.478/2016 of this Court titled ***BLS International Services Ltd. Vs. Digicall Global Pvt. Ltd.***
4. What transpires is that the petitioner had instituted a suit being CS(OS) No.3723/2014 in this Court for recovery of Rs.65,34,366.60 paise from the respondent BLS International Services Ltd.

5. The respondent BLS International Services Ltd., besides filing a written statement to the aforesaid suit of the petitioner also filed a counter-claim therein for recovery of Rs.2,90,64,600/- from the petitioner. The counter-claim was registered as Counter-Claim No.29/2016.

6. On enhancement of the minimum pecuniary jurisdiction of this Court vide Delhi High Court (Amendment) Act, 2015 and in pursuance to the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice of this Court, vide order dated 29th August, 2016 in CS(OS) No.3723/2014 and CC No.29/2016, the suit filed by the plaintiff being of a value below the minimum pecuniary jurisdiction of this Court was transferred to the District Court, while the Counter-Claim retained in this Court and ordered to be re-numbered as a suit and has been numbered as CS(OS) No.478/2016.

7. Hence, this petition under Section 24 of CPC.

8. The order dated 29th August, 2016 supra also records the pendency of an application filed by the respondent under Section 8 of the Arbitration & Conciliation Act, 1996. The counsel for the petitioner, on enquiry, states that the said application is still pending and further adds that in view of the counter-claim having been filed, the said application has become infructuous.

9. The order of transfer being a judicial order by a Co-ordinate Bench of this Court, I have wondered, whether the power under Section 24 of CPC can be exercised to undo what was done by that order.

10. However, on further consideration, I find the splitting up of the suit and counter-claim therein vide order dated 29th August, 2016 to be a mistake of the Court and applying the principle enunciated in ***Jang Singh Vs. Brijlal***

AIR 1966 SC 1631 that it is the bounden duty of the Courts to see that if a person is harmed by a mistake of the Court, he should be restored to the position he would have occupied but for that mistake, notwithstanding the litigant also having not been vigilant, I am of the view that the consideration aforesaid does not come in the way of the said mistake being corrected, even in this proceeding. Though the petitioner also on 29th August, 2016 did not oppose such splitting up and did not appeal against the order dated 29th August, 2016, but Supreme Court in the said judgment has held that litigants act on the faith that Court cannot hold the litigant responsible for Court's own mistake.

11. I say that a mistake has been committed by the Court because Order VIII Rule 6A(2) and Order VIII Rule 6F of CPC provide that the Court, in the suit in which a counter-claim is made, is to pronounce a final judgment, both in the original claim i.e. suit and the counter-claim and pass the final order/decreed with respect to the balance if any found due to the plaintiff or the defendant, as the case may be, on adjudication of the suit and the counter-claim. The same are indicative of the legislative intent of the suit and the counter-claim being decided together and being not liable to be separated. In this regard, I may also notice that the prohibition contained in the Proviso to Order VIII Rule 6A of CPC to making of a counter-claim is only to the effect, that the same shall not 'exceed the pecuniary limits of the jurisdiction of the Court' and not that it should not be 'below the pecuniary limit of the jurisdiction of the Court'. Rules 6A(2) and 6F of Order VIII are as under:

“6A. Counter-claim by defendant.—(1)

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

6F. Relief to defendant where counter-claim succeeds.—
Where in any suit a set-off or counter-claim is established as a defence against the plaintiffs claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.”

12. The order dated 29th August, 2016 separating the suit and the counter-claim violates the aforesaid provisions of law and is clearly a mistake.

13. I also find the question to be no longer *res integra*. A Division Bench of this Court in ***Raj and Associates Vs. Videsh Sanchar Nigam Limited*** 159 (2009) DLT 141 was concerned with the same very question i.e. when the suit claim is less than the pecuniary jurisdiction as required for filing a suit in this Court, is the suit liable to be transferred to the appropriate Court of pecuniary jurisdiction or has the plaint to be retained in this Court and be consolidated with the counter-claim filed by the defendant. Referring to Order VIII Rule 6A(2) of CPC and the judgments in ***T.K.V.S. Vidyapoornachary Sons Vs. M.R. Krishnamachary*** AIR 1983 Mad 291, ***Barthels and Luders Gmbli Vs. M.V. Dominique*** AIR 1988 Bom 380 and ***Amrit Lal Basumatari Vs. Shri Abdul Muhib Mazumdar*** AIR 1991 Gauhati 85, it was held (i) that a final judgment has to be pronounced by the Court on both the suit and the counter-claim—such common judgment can only be passed if both are heard together and disposed of together—the object is to give a quietus with respect to the suit claim and the counter-claim which are

related to each other so as to finally bind the parties with respect to all connected issues by a common judgment; (ii) that the object is to avoid conflicting judgments by different Courts on common issues which may arise in a suit and counter-claim; (iii) that ordinarily, a suit claim and the counter-claim relate to the same subject matter and inter-related causes of action and therefore are best disposed of by hearing and disposing of both, the suit and the counter-claim together; and, (iv) that it is not necessary that the subject matter and causes of action of the counter-claim and the suit should be inextricably interlinked.

14. I may also add that though Order VIII Rule 6C of CPC entitles the plaintiff to contend that the counter-claim raised ought not to be disposed of by way of a counter-claim but in an independent suit but the order dated 29th August, 2016 is not in exercise of powers under Order VIII Rule 6C of CPC and even otherwise there appears to be no reason for separating the two; moreover, here the petitioner/plaintiff himself is wanting the two to be decided together.

15. For correcting the said mistake, I do not deem it necessary to issue notice to the respondent. Suffice it is to state that the petitioner, on 15th July, 2017 before the Court of Sh. Girish Kathpalia, District Judge, South-East, Saket Courts, New Delhi, informed of his intent to move this petition and the long date of 9th October, 2017 was given therein to enable the petitioner to do so.

16. Accordingly, the petition is allowed; CS No.11152/2016 titled ***Digicall Global Pvt. Ltd. Vs. BLS International Services Ltd.*** of the Court of Sh. Girish Kathpalia, District & Sessions Judge, South East, Saket Courts,

New Delhi is ordered to be transferred to the Ordinary Original Jurisdiction of this Court to be tried along with the present CS(OS) No.478/2016 of this Court, with the two suits to be restored to the same position as they were prior to 29th August, 2016.

17. The counsel for the petitioner to inform the learned Joint Registrar before whom CS(OS) No.478/2016 is informed to be listed tomorrow.

18. The Court of the District Judge, South East, Saket Courts, New Delhi to forthwith transfer the file of CS No.11152/2016 titled ***Digicall Global Pvt. Ltd. Vs. BLS International Services Ltd.*** to this Court.

19. The petition is disposed of.

Copy of this order be given *dasti*.

SEPTEMBER 05, 2017

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RAJIV SAHAI ENDLAW, J.