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

\+ CM(M) 1304/2017

ARB INC ..... Petitioner

Through: Mr.Suhail Dutt, Sr. Advocate with Mr.Rajesh Roshan, Mr.Azhar Alam, Mr.Ankur Manchanda, Advocates

versus

UNITED INDIA INSURANCE CO. LTD & ORS ..... Respondents

Through: Ms.Purnima Maheshwari, Adv. for Respondent No.7

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **21.11.2017**

CM No.41887/2017 (for exemption)

1. Allowed subject to just exceptions.

2. The application is disposed of.

CM(M) 1304/2017 & CM No.41888/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 6th July, 2017 in CS No.59291/2016 of the Court of Additional District Judge-04, Patiala House Courts, New Delhi] of dismissal of the application of the petitioner/plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint.

4. The counsel for the respondent No.7 Gas Authority of India Ltd. appears on advance notice.

5. The senior counsel for the petitioner/plaintiff has been heard.

6. The petitioner/plaintiff instituted the Suit from which this petition arises, as far back as in the year 2003, (a) for declaration that the petitioner/ plaintiff is the true and rightful assignee of insurable interest under insurance policy issued by the respondent No.1/defendant No.1 United India Insurance Company Ltd.; (b) for mandatory injunction directing the respondent No.1/ defendant No.1 to duly process the claim under the said policy and to assess the damage and pay the amount to the petitioner/plaintiff with interest; and, (c) in the alternative, for mandatory injunction, directing other respondents no.2 to 9/defendants to endorse the policy in favour of the petitioner/plaintiff and to not interfere with the petitioner/ plaintiff realising the claim under the policy.

7. The Suit, for the reliefs of declaration and relief of mandatory injunction was valued for the purpose of Court fees and jurisdiction, at Rs.20,00,000/- each and as per the then minimum pecuniary jurisdiction of this Court, was filed on the ordinary original civil jurisdiction of this Court. On enhancement of the minimum pecuniary jurisdiction of this Court vide the Delhi High Court (Amendment) Act, 2015 and consequent to the notification issued by the Chief Justice, the Suit being below the enhanced minimum pecuniary jurisdiction of this Court, was transferred to the sub-ordinate courts and is now pending in the Court of the Additional District Judge as aforesaid.

8. The petitioner/plaintiff filed the application aforesaid to amend the paragraphs of the plaint relating to valuation for the purpose of court fees and jurisdiction, to enhance the valuation for the relief of declaration, to over Rs.1 Crore so as to bring the Suit back to this Court labelling the same as a commercial dispute within the meaning of the Commercial Courts,

Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

9. The said amendment has been denied by the learned Additional District Judge reasoning that the Suit is at its last legs, with only some witnesses of the respondent No.1/defendant No.1, who is stated to be the only contesting defendant, remaining to be examined and there is no reason for enhancing the valuation.

10. The senior counsel for the petitioner/plaintiff has referred to the judgment of the Full Bench of this Court in ***Subhashini Malik vs. S.K. Gandhi & Ors.*** (2016) 233 DLT 83 and to which I was also privy.

11. Though undoubtedly the Full Bench of this Court has held that for the reliefs as of declaration and injunction, valuation whereof is in the discretion of the plaintiff, on change in the pecuniary jurisdiction of this Court, the plaintiff cannot be denied the right to amend the valuation so as to retain the Suit in this Court but at the same time, the reasoning given by the learned Additional District Judge in the impugned order is also found to be cogent. The Suit is at its last legs and in terms of the directive of the National Court Management Systems Committee of the Supreme Court, being more than ten years old, is likely to be decided before 31st December, 2017. I have thus enquired from the senior counsel for the petitioner/plaintiff, whether the petitioner/plaintiff is not confident of getting the relief prayed for and / or for other reasons does not want early disposal of the Suit. Judicial notice can be taken of the fact that owing to the heavy roster on the ordinary original civil jurisdiction of this Court, the Suit, if brought back to this Court on enhancement of valuation, is not likely to be decided by 31st December, 2017.

12. The senior counsel for the petitioner/plaintiff, instead of answering, has referred to ***Mount Mary Enterprises vs. Jivratna Medi Treat Pvt. Ltd.*** (2015) 4 SCC 182 and contends that in the said judgment also, the amendment qua valuation was allowed by the Supreme Court when the Suit was at the stage of final hearing. It is also vaguely suggested that the petitioner/plaintiff desires it's suit to be decided by the High Court and not by the District Court.

13. The petitioner/plaintiff is an American company. If it is felt that the petitioner/plaintiff will have an early adjudication of its claim, which has already been pending for the last fourteen years, I do not see any reason why at the sweet will of the petitioner/plaintiff, the Suit should be permitted to remain pending.

14. I have yet again asked the senior counsel for the petitioner/plaintiff as to what is the prejudice which the petitioner/plaintiff will suffer if its suit is decided by the learned Additional District Judge instead of by this Court.

15. No prejudice is disclosed.

16. A litigant, though has a right, to value a certain class of suits as per its discretion and to thereby determine whether the suit is filed before the Civil Judge or the District Judge or the High Court, the three tiers in which the suit jurisdiction is layered, but cannot be allowed to change valuation arbitrarily, particularly when such arbitrariness prejudices administration of justice, bringing justice delivery system to disrepute, by conveying to litigants sitting in far away lands that disposal of suits remains pending indefinitely.

17. The Full Bench of this Court, in ***Subhashini Malik*** supra was primarily concerned with the powers of this Court to consider the

application for amendment, after the notification for transfer of suit because of change in pecuniary jurisdiction and before the suit file was administratively transferred. One of the reasons given for holding this Court to be so empowered, was of expediency and delays involved in first transferring the suit and the suit being required to be again transferred to this Court in the event of amendment being allowed.

18. On the contrary here, amendment sought is found to be dilatory, rather than aiding in expeditious disposal.

19. What prevailed with the Supreme Court in ***Mount Mary Enterprises*** supra was, that it was the defence of the defendant in that case that the suit was not properly valued for court fees and jurisdiction. It was for this reason held that "if in pursuance of the averments made in written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment".

20. I have enquired from the senior counsel for the petitioner/plaintiff as to what is the insured loss / damage qua which declaration and mandatory injunction is claimed in the suit. It is not the case of the petitioner/plaintiff in the amendment application that the amendment is necessary for this reason of or owing to objection by the defendants in their written statement. It has also been enquired, whether the Suit for declaration, without any relief of recovery of money sought to be claimed, would lie.

21. The senior counsel for the petitioner/plaintiff contends that since the claims have not been assessed and the surveyor not been appointed, the Suit lies.

22. Be that as it may, those are not to be adjudicated at this stage. Suffice it is to state that the amendment sought is neither claimed to be nor found to be necessary for determining the real questions in controversy between the parties and is found to be arbitrary. Thus the amendment claimed does not pass the test of Order VI Rule 17 of the CPC. This Court in ***Taran Jeet Kaur Vs. G.S. Bhatia*** 2009 (108) DRJ 89, relying on ***Nandita Bose Vs. Ratan Lal Nahata*** (1987) 3 SCC 705, ***Narinder Kumar Vs. Sun Shine Roadways*** 1999 Rajdhani Law Reporter 201 and on ***Trans Asia Auto and General Finance Ltd. Vs. Dharmendar Kumar*** 2001 VII AD (Delhi) 598 held that the plaintiff is not entitled to arbitrarily overvalue the suit so as to bring the suit within the jurisdiction of this Court.

23. For the aforesaid reasons, I do not deem it appropriate to interfere under Article 227 of the Constitution of India with the discretion exercised by the learned Additional District Judge in refusing the amendment.

24. There is no merit in the petition.

25. Dismissed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017
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