IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 03RD DAY OF OCTOBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.6641 of 2018
in
C.S.No.489 of 2013

M/s. Raj Petro Specialities Pvt., Ltd.
Rep.by its Chairman & Managing Director
Mr.B.J.Nanavati
No.2A-D, Doshi Towers,
2nd Floor, 156, Poonamallee High Road,
Kilpauk, Chennai - 600 010.
:Applicant/Plaintiff

Vs

1. M/s. Victory Electricals Ltd.,
No.860/64-B, Near Royal
Enfield Ltd., Thiruvottiyur,
Chennai 600 019.

2. M/s. Victory Electrical Ltd.,
Plot No.8, Sy.No.855, Industrial Estate,
Medchal District, Ranga Reddy,
Andhra Pradesh 501 401.

3. M/s. Victory Transformers & Switchgears Ltd.,
Plot No.8, Sy.No.855, Industrial Estate,
Medchal District, Ranga Reddy,
Andhra Pradesh - 501 401.

4. M/s. Victory Transformers & Switchgears Ltd.,
D-52, Phase IV (Extn)
IDA Jeedimetla
Hyderabad - 500 055. : Respondent/Defendants

Application praying that this Hon'ble Court be pleased to permit the plaintiffs to file a reply to the Written Statement filed by defendants in this Hon'ble Court.

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This Application coming on this day before this court for hearing the court made the following order:-

There is a sole plaintiff and there are four defendants in the main suit.

2. Sole plaintiff in the main suit is the lone applicant herein and defendants 1 to 4 in the main suit are respondents 1 to 4 respectively in the instant application.

3. Parties in this application are referred to by their respective ranks in the main suit for sake of convenience and clarity.

4. Instant application has been taken out by the plaintiff with a prayer to permit the plaintiff to file a reply to the written statement filed by the defendants. In other words, this is a prayer seeking permission to file a replication *inter alia* under Order VIII Rule 9 of 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity).

5. The entire matter turns on a very narrow compass and it is a very simple application with a innocuous prayer.

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6. Ms.V.S.Sowmya, learned counsel on record for plaintiff and Mr.K.Koteswara Rao, learned counsel on record for all the defendants are before this Commercial Division.

7. From the submissions made by both learned counsel, it comes to light that the suit has been laid by the plaintiff claiming certain sums of money, which according to the plaintiff are due towards transformer oil supplied by the plaintiff to the defendants.

8. Defendants have filed a written statement.

9. It is submitted that for the first time in the written statement the defendants have raised a plea that the transformer oil supplied by the plaintiff was adulterated and this is being set up as one of the defences for non payment.

10. Learned counsel for plaintiff emphatically submits that the aforesaid plea, i.e., oil supplied by the plaintiff being adulterated, is being raised for the first time in the written statement and therefore it becomes new facts qua lis, resulting in the need and necessity to file replication, owing to which, the instant application has been filed.

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11.Therefore, I embarked upon the exercise of examining if there has been a pre suit notice and reply to the same.

12. It is brought to my notice that there was a pre suit notice i.e., a notice dated 18.02.2013. To be noted, three copies of this notice have been filed as plaint document Nos.28, 29 and 30. In plaint document No.28, first defendant is the noticee. In pliant document No.29, defendants 2 and 3 are noticees. In plaint document No.30, defendant 4 is the noticee.

13. It is asserted that the defendants having received the aforesaid pre suit notice, but have not chosen to reply. This position is not disputed.

14. Therefore, there is no pre suit correspondence wherein the issue of transformer oil supplied by the plaintiff being adulterated has been raised.

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15. Be that as it may, learned counsel for defendants brought to my notice an undated letter that has been filed by the defendants along with their written statement. To be noted, this undated letter has been filed as defendants' document No. 2 along with their written statement. A perusal of the document reveals that

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it is not only undated, but there is nothing to show that the same has been served on the plaintiff.

16. Furthermore, the contents of the letter reveals that the defendants have only stated that the quality of the transformer oil supplied is poor. In other words, there is no mention about adulteration.

17. Be that as it may, I do not want to express any opinion about this undated letter and service of the same on plaintiff, as it is open to the defendants to prove the same in a manner known to law, if such a course is available to them.

18. Under the aforesaid circumstances, it emerges clearly that the allegation of the transformer oil supplied by the plaintiff being adulterated is a new fact that has been raised for the first time in the written statement.

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19.Therefore, the plaintiff is entitled to file a replication.

20. Though obvious it is made clear that the averments and contents of the replication and documents if any filed with the same have also to be proved in a

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manner known to law. Any application filed/received is subject to proof and relevance and this principle will apply to the documents pressed into service with the replication too.

21. In the light of the narrative supra, the instant application is allowed.

22. Registry is directed to take the replication filed by the plaintiff dated 28.06.2018 vide D.No.6603 of 2018 along with six documents on file.

23. This application is ordered as above and with this pleadings are complete.

Sd/.M.S.J

03.10.2018

//Certified to be a true copy//

Dated this the day of 2018.

DL/09/10/2018 COURT OFFICER

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From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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