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

\+ CM(M) 958/2018 & CM APPL. 33415/2018

Date of decision: 20.08.2018

VARUN PAHWA ..... Petitioner

Through Mr. Avinash Kumar Lakhanpal, Adv.

versus

RENU CHAUDHARY ..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R (ORAL)

% **20.08.2018**

ANU MALHOTRA, J.

CM APPL. 33415/2018

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

CM(M) 958/2018

3. Submissions made on behalf of the petitioner.

4. The petitioner assails the impugned order dated 23.01.2018 of the Trial Court of the learned ADJ-06, Central, Delhi in CS No.

12873/16 vide which the application under Order VI Rule 17 CPC filed by the plaintiff seeking permission to amend the plaint was disallowed with the matter having been renotified for arguments on the maintainability of the suit.

5. The plaint instituted on behalf of the plaintiff i.e. the present petitioner was a Suit for the recovery of Rs.25 lakhs alongwith pendentelite and future interest @ 24% against the defendant to the said suit, arrayed as the respondent to the present petition. The plaintiff's submissions in the said plaint are categorically detailed in the paras 3, 4, 5, 6, 7 8 & 9, which are to the effect :-

> ***"3. That the defendant had approached to the plaintiff for a friendly loan of Rs. 25,00,000/- through RTGS on 16/06/2013 drawn on HDFC Bank, Delhi and assured the plaintiff to refund the same- as soon, as possible to the plaintiff.***
>
> ***4. That- after sometime, the plaintiff demanded the loan amount from the defendant, but the defendant did not pay the loan amount and excuses on***
>
> ***one pretext to another.***
>
> ***5. That thereafter the plaintiff again requested the defendant and also requested to the defendant to repay the loan amount but the defendant did not pay the loan amount and also gave false assurances.***
>
> ***6. That all the requests, efforts of the plaintiff could not reach to the deaf ears of the defendant and moreover noticing the conduct and attitude of the defendant . The defendant has not returned the plaintiff hard earned money.***

7. That having no other alternative, 'the plaintiff sent a legal demand notice dated 11/05/2016 through his counsel, upon the defendant by speed post calling upon the defendant to pay the entire amount along with Interest @ 24% per annum but the defendant failed to pay the amount of Rs.25,00,000/- to the plaintiff till date, hence this suit.

8. That there is no other officious remedy available to the plaintiff except to file the present suit.

9. That cause of action arose on 16/06/2013 when the defendant approached the plaintiff. The cause of action further arose on when the plaintiff advanced loan of Rs.25,00,00/- through RTGS. The cause of action also arose on different dates as and when the plaintiff demanded the repayment of loan. The cause -of action further arose on 11/05/2016 when a legal notice of demand was duly served upon from the defendant .for demanding the amount from the defendant. The cause of action further arose when the defendant totally and finally refused to acceed the request of the plaintiff and as such the cause of action is still subsisting and continuing, hence, the present suit.

to which the written statement of the defendant i.e. the respondent is on record with *inter alia* submissions as under : -

"4. That the plaintiff has concealed various material facts from the this Honhle Court which are as follows : -

a. In the first week of June, 2013, the plaintiff informed the defendant that he has visited a project ION Buildcon Pvt. Ltd. and is interested to purchase a flat therein and sought some help from the defendant on the ground that the plaintiff is doing business of garments at a big level. Sh. Varun

Pahwa requested the defendant to book a unit in project of ION Buildcon Pvt. Ltd. for him and interest his money of Rs. 25 Lacs and deal on this behalf with the concerned

company M/s ION Buildcon Pvt. Ltd. and in pursuance of that the plaintiff transferred Rs. 25 Lacs through RTGS on 16.06.2013. As per instruction of Sh. Varun Pahwa, the defendant also got prepare draft and deposited the same with the M/s ION Buildcon Pvt. Ltd. for booking Unit No. Y/1106 i.e. 2BHK Flat having 1580 sq. feet super area approx. in project Iridia, Sector 86, Noida, U.P., for the plaintiff as per his instruction and advise and the copy of the same was also handed over to Sh. Varun Pahwa. In due course, the rate of the flats and properties in NCR has fallen and the plaintiff has become dishonest and now does not want to purchase the aforesaid unit of 2 BHK Flat of area 1580 sq. Feet Iridia. The defendant has never approached for any loan of Rs. 25 Lacs as alleged as he is having a good business and sufficient account with herein her personal account as well as in account of her family members and her proprietary/ company concerns. It is further stated that the plaintiff had approached M/s ION Buildcon Pvt. Ltd. for cancellation of the Unit and had also asked the defendant for getting cancelled the Unit booked for him, but as there is a fall in the prices of the properties and the aforesaid company had assured to handover the unit in due course as the project is continued and the company has already spent a huge amount on the project, therefore, the company M/s ION Buildcon Pvt. Ltd. refused to cancel the booking and return the amount and therefore, the plaintiff has got issued fictitious notice in order to pressurize the defendant for getting cancelled the aforesaid unit and return of their booking amount, while the defendant has booked the unit as per

instruction of the plaintiff and she has no concern with the aforesaid transaction of booking of flat between the plaintiff and M/s ION Buildcon Pvt. Ltd. However, the defendant is always ready to help out the plaintiff for purchasing the aforesaid unit."

6. Vide the plaint, it is essential to observe that it is categorically submitted by the plaintiff that a friendly loan had been disbursed to the defendant, which is to the effect: -

> ***"3. That the Defendant had approached to the Plaintiff for a friendly loan of Rs.25,00,000/- through RTGS on 16.06.2013 drawn on HDFC Bank, Delhi and assured the Plaintiff to refund the same as soon as possible to the Plaintiff."***

7. The legal notice issued on behalf of the defendant i.e. the respondent herein dated 11.05.2016 vide para 2 thereof is to the effect:-

> ***"2. That you the notice had approached to my client for a friendly loan of Rs.25,00,000/- through RTG on 16.06.2013 drawn on HDFC Bank, Delhi and assured my client to refund the same as soon as possible to my client."***

8. On behalf of the plaintiff i.e. the present petitioner through the application under Order VI Rule 17 CPC, it was submitted vide paras 4 to 8 to the effect : -

> ***"4. That the previous counsel has inadvertently made the title of the suit wrongly as the loan was advanced through the company therefore the suit was to be in the name of the company. The applicant is therefore enclosing the amended memo of parties in this regard. That due to said change the para No. 1 and 2 of the***

plaint requires certain amendment as inadvertently the board of resolution passed by the company in favour of the authorized representative namely Navneet Gupta was also not placed on record. The contents of the para No. 1 and 2 is reproduced as under:

> *1. . That the Plaintiff is law abiding and peace loving citizen of India.*
>
> *2. That the Plaintiff has given the SPA to Sh. Navneet Gupta, R/o. 322, Kohat Enclave, Pitam Pura, Delhi 11.05.2016 (Copy Enclosed).*

5. That the above mentioned paras may now be amended and read as under:

> *1. That the Plaintiff is a Private Limited Company having its registered office at: I-VA (Property bearing No.XII), Jawahar Nagar, Delhi*
>
> *2. That the present plaint is filed through the authorized representative of the Plaintiff namely Sh. Navneet Gupta, R/o. 322, Kohat Enclave, Pitam Pura, Delhi who has been authorised vide board resolution dated 12.05:2016. to sign, verify and execute all documents, papers, complaints, applications, plaint, written statement. Counter claim, affidavits, replies, revisions, etc. and to institute, pursue and depose in all legal proceedings and court cases on behalf of Siddharth Garments Pvt. Ltd against Mrs. Renu Chaudhary who was given the loan ofRs. 25 lakhs.*

6. That after perusal of the suit it also revealed that the previous counsel has inadvertently also left out few words in the para No.3 of the plaint, the para No. 3 of the plaint is reproduced as under:

> ***3. That the Defendant had approached to the Plaintiff for a friendly loan of Rs.25,00,000/- through RTGS on 16.06.2013 drawn on HDFC bank, Delhi and assured the Plaintiff to refund the same as soon as possible to the Plaintiff."***

7. That the above mentioned paras may now be amended and read as under:

> ***"3. That the Defendant had approached to the Plaintiff for a friendly loan of Rs.25,00,000/- through Sh. Ndvneet Gupta and the same was transferred through RTGS on 16.06.2013 drawn on HDFC bank, Delhi and assured the Plaintiff to refund the same as soon as possible to the Plaintiff."***
>
> ***Copy of the amended suit is enclosed herewith this application.***

8. That the above said amendment does not in any manner changes the nature of the suit and the said amendments are technical in nature and it is settled law that the technicality should not defeat, the principle of natural justice."

9. On behalf of the petitioner, it has been submitted that this is only a typographical error and the nomenclature is sought to be rectified and that the amendment sought would not in any manner change the nature of the suit. Reliance is placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon, AIR 1969 SC 1267*** to contend that the amendment ought to be allowed and that the relief ought not to be refused due to a mistake, negligence, inadvertence or even infraction of the rules of the procedure.

10. It is essential to observe that the facts of the instant case are not in *pari materia* with the facts of the case relied upon on behalf of the petitioner as rightly observed by the learned Trial Court vide observations in paragraphs 5, 6, 7, 8 & 9 of the impugned order to the effect : -

> ***"5. I have seen the application as well as the plaint. The memo of parties attached with the plaint is as follows :***
>
> ***Varun Pahwa***
> ***Through Director of Siddharth Garments Pvt. Ltd.***
> ***I-VA (property bearing No. XII)***
> ***Jawahar Nagar, Delhi***
> ***Through its AR Navneet Gupta,***
> ***R/o. 322, Kohat Enclave,***
> ***Pitam Pura, Delhi – 34. … Plaintiff.***
>
> ***VERSUS***
>
> ***Mrs. Renu Choudhary***
> ***w/o Sh. Vinay Kumar***
> ***XXXXXX … Defendant***
>
> ***6. The memo of parties as well as the body of plaint it is nowhere mentioned that it was a loan disbursed by a private limited company. Rather, the reference is only to a private individual Mr. Varun Pahwa, although, he is also referred to as Director of Siddharth Garments Pvt. Ltd. Company in the memo of parties.***
>
> ***7. The legal notice dated 11/05/2016 annexed with the plaint also mentions that it has been issued "under the instructions and authority from my client Varun Pahwa, M.D. of Siddharth Garments Pvt. Ltd., I-VA, Jawahar Nagar, Delhi", to defendant Mrs. Renu***

Chaudhary. The notice also does not mention that it has been issued on behalf of a private limited company or that the alleged loan was given to defendant by a private limited company.

8. The plaint was instituted through its AR (sic) Navneet Gupta, R/o. 322, Kohat Enclave, Pitam Pura, Delhi - 34. The plaint was signed and verified by Mr. Navneet Gupta on the strength of one SPA dated 12/05/2016, executed by Mr. Varun Pahwa, M.D. in Siddharth Garments Pvt. Ltd., in favour of Mr. Navneet Gupta. The said SPA also does not refer to any resolution of Board of Directors of Siddharth Garments Pvt. Ltd., vide which Mr. Navneet Gupta was appointed attorney of the company to institute the present case.

The said SPA also does not mention that its executor Mr. Varun Pahwa has been authorized by Siddharth Garments Pvt. Ltd. to execute it in favour of Mr. Navneet Gupta;

9. Evidently, the present application filed under Order VI Rule 17 CPC is an attempt of applicant to convert the suit filed by a private individual into a suit filed by private limited company, which is not permissible as it completely changes the nature of the suit. Hence, the application is dismissed as misconceived and untenable."

11. It has rightly been observed by the learned Trial Court vide the impugned order dated 23.01.2018 to the effect that through the application under Order VI Rule 17 CPC, the petitioner herein i.e. the plaintiff of the said suit has sought to convert the suit filed by a private individual into a suit filed by a private limited company and thus the prayer cannot be allowed. There being no infirmity in the impugned order, the petition and its accompanying applications are rejected.

12. Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

AUGUST 20, 2018/MK