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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 10th November, 2020
+ **C.R.P. 72/2020 and CM APPL. 28635/2020, 28636/2020**

VISHNU INFRA AND ENERGY SOLUTIONS PVT.
LTD. & ANR.

..... Petitioners

Through: Mr. Shiv Shankar Banerjee, Adv.
versus

ROHIT SINGHAL & ORS.

..... Respondents

Through: Mr. Akshay Sharma, Adv. for R1-R4.
Mr. Varun Shankar and Mr. Rahul
Gupta, Advs. for R-7 & 8 (HDFC).
Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advocates for R-9/SBI (M:
9716076533).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. The present petition arises out of the impugned order dated 9th January, 2020, by which the amendment application under Order VI Rule 17 CPC filed by the Petitioner/Plaintiff has been dismissed by the Trial Court.
3. A suit for mandatory injunction and recovery of sum of Rs.1.25 crores was filed by the Plaintiff against the Respondents/Defendants. The prayer in the suit is as under: -

“a) To pass a mandatory injunction order as per sec.26 (1) (c) of specific relief act 1963, restraining the defendants from defreezing the fraudulently en-cashed cheque amount which is lying frozen with defendant no.9 bank in the account of defendant no.6, frozen vide order dated 26.05.2016 and the same is in the subject matter of C.C.No. 14 of 2018 in complaints filed by plaintiff before S.H.O., Madhapur and XXV MM,

Kukatpally, during the pendency of this suit.

b) Directing the defendants 1 to 9 jointly and severally to pay a sum of Rs. 1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only) towards principal and Rs.90,00,000/- towards interest from 30.05.2016 till the date of filing of this suit i.e., 22.05.2019 @ 24% per annum till the date of repayment;

c) Award costs of the suit;

d) Pass such other order or orders as are deemed fit and proper in the circumstances of the case and interest of justice.”

4. During the pendency of the said suit, an application under Order VI Rule 17 read with Section 151 of the CPC was moved by the Plaintiff, seeking addition of a declaratory prayer to the following effect: -

“b) declare that there is no legally and enforceable debt of defendants 1 to 6 against the plaintiffs and Rs.1.25 Crores lying in the bank account of defendant No.6 belongs to plaintiffs.”

5. The case of the Plaintiff as made out in the application under Order VI Rule 17 is that the MOU which was entered into between Respondent No.1 and its relatives is illegal and void and is also contrary to law, in view of the provisions of the Companies Act, 2013. Further case of the Plaintiff is that the declaratory relief would be required in order to seek recovery.

6. The Trial Court has dismissed the application on two grounds being firstly, that the amendment is not necessary and secondly, that the application for amendment has been filed beyond the period of three years and is barred by limitation. Mr. Banerjee, Id. counsel appearing for the Petitioner submits that the cause of action for seeking the declaratory prayer arose on 29th April, 2019 and hence the relief was not barred by limitation.

7. Insofar as Respondent No.1 is concerned, it is the submission of Id. counsel that the declaratory prayer is superfluous, because if the recovery of Rs. 1.25 crores is allowed, that would in fact be on the basis that the amount is payable to the Plaintiff.

8. This Court has heard Id. counsels for the parties and perused the suit record. The suit as filed prays for mandatory injunction and recovery of Rs.1.25 crores. When the Trial Court would be considering the relief of recovery of Rs.1.25 crores, it would have to adjudicate whether any amount is payable by the Plaintiff to the Defendant under the MOU and whether the MOU is itself enforceable in law. It is only after the Trial Court adjudicates these issues in respect of the *inter-se* liabilities of the parties, that the relief of recovery can be considered. Thus, the liability of the Plaintiff, if any, or the liability of the Defendant, if any, is inbuilt in the prayer for recovery i.e. prayer B. Accordingly, the declaratory relief is in fact not required. The impugned order does not warrant any interference.

9. The Trial Court would however frame issues in terms of the pleadings of the parties and shall also permit evidence to be led in respect of their respective cases. While adjudicating the question of recovery, the Trial Court would also consider whether the Plaintiff owes any money to the Defendant or if the Defendant is liable to pay any monetary sums to the Plaintiff.

10. No further orders are required in this petition. The petition, along with any pending applications, is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 10, 2020/MR/A