

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

% **Pronounced on: 29th September, 2021**

+ **CM (M) 514/2021, CM APPL. 24668/2021 (by the petitioner u/S 151 CPC for interim relief)**

SMAAASH ENTERTAINMENT PVT. LTD. Petitioner

Through **Ms. Diya Kapur and Mr. Rohan Poddar, Advocates**

versus

VARSICON ENGINEERING PVT. LTD. Respondent

Through **Mr. Kailash Chandra, Advocate**

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Article 227 of the Constitution of India against the order dated 1st February, 2021 passed by the learned Trial Court in suit bearing CS-DJ-6668 of 2016.

2. The respondent is the plaintiff who had filed a suit under Order XXXVII CPC against the petitioner for the recovery of a sum of Rs.46,44,496/- with interest. The petitioner was granted leave to defend the said suit. The petitioner thereafter filed a written statement-cum-counter claim for a sum of Rs.50,00,000/- as loss of revenue on account of delay and Rs.42,81,600.65 plus Rs.22,00,000/- as costs and freight charges.

3. The replication and response to the counter claim was filed by the respondent, whereafter on 29th July, 2019, the learned Trial Court framed the following issues:

- “1. Whether plaintiff is entitled for balance amount of Rs.35,36,088/- as certified by M/s Jones Lang Lasalle and Project Management Consultants (PMC) of defendant? OPP*
- 2. Whether plaintiff is entitled for interest, if yes, at what rate and for what period? OPP*
- 3. Whether plaintiff is entitled for 5% retention money as certified by PMC of defendant? OPP*
- 4. Whether defendant/counter claimant is entitled for Rs.50 lac as compensation for delay in execution work by the plaintiff? OPD*
- 5. Whether defendant/counter claimant is entitled for cost of recovery of imported lighting fixtures, installation thereof to the tune of Rs.42,81,600/- plus duty and freight charges of Rs.22 lac as prayed? OPD*
- 6. Whether defendant is not liable for amount certified by its PMC as it was beyond power and authority of PMC? OPD*
- 7. Whether counter claim is barred by limitation? Onus on the parties*
- 8. Relief.”*

Subsequently, thereto, the respondent filed an application for framing of an additional issue. Vide the impugned order dated 1st February, 2021, the learned Trial Court allowed the said application and framed an additional issue to the following effect:

“1A. Whether the Written Statement-cum-Counter Claim has been signed, verified and filed/instituted by the Competent Person? OPD”

4. The petitioner is aggrieved by this order and the framing of the additional issue.

5. Ms. Diya Kapur, learned counsel for the petitioner, has submitted that keeping in view the judgments of the Co-ordinate Bench of this Court in *Anil Kumar Vs. Devender Kumar and others*, 2019 SCC Online Del 8782 and *Kawal Sachdeva Vs. Madhu Bala Rana & others*, 2013 SCC Online Del 1479, it was not necessary that on every pleading, an issue should be framed. Learned counsel has further submitted that an issue could be framed only on material proposition of facts or law and that unnecessary issues were only delaying tactics and framing of such issues must be abjured by the court.

6. Learned counsel placing reliance on the judgments of the Supreme Court in *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another*, (2006) 1 SCC 75 and *United Bank of India Vs. Naresh Kumar and others*, (1996) 6 SCC 660, has further submitted that the issue of signing and verification of pleadings were not more than curable irregularities, if they were not properly carried out. It was further submitted that though the original written statement-cum-counter claim filed on behalf of the petitioner had not been signed, but subsequently, the signed written statement-cum-counter claim had been filed and duly accepted on record by the learned Trial Court, particularly, in the light of the order dated 1st April, 2019, whereby, the learned Trial Court had affirmed that it had jurisdiction to proceed with the suit. It was the contention of the learned counsel for the petitioner that once the court had come to the conclusion that the written statement-cum-counter claim had

been duly signed and verified, there was no purpose at all in framing the additional issue regarding the competency of the person signing and verifying the pleadings. Thus, it was submitted that the petition be allowed and the additional issue framed be struck off.

7. On the other hand, Mr. Kailash Chandra, learned counsel for the respondent, has submitted that there was no procedural impropriety committed by the learned Trial Court in framing the additional issue and the petition under Article 227 of the Constitution was itself not maintainable. It was further submitted that the reason why the issue was framed was because as per the own documents of the petitioner, the due authority to sign the pleadings was not disclosed.

8. Learned counsel pointed out that the Board Resolution was dated 9th June, 2016, whereas, the petitioner had been served with summons in the summary suit only on 7th July, 2016, therefore, it was suspicious as to how the name of the suit could have been incorporated in the Board Resolution. Furthermore, it was submitted that the Directors were located in different countries, one Director being located in UAE, another in USA and a third one in India, and therefore, it was a question of fact as to whether at all, such a Resolution, as claimed and filed by the petitioner, had in fact been passed.

9. It is further submitted by the learned counsel for the respondent that Mr. Vishwanath Kotian, Chief Financial Officer of the company, who had supposedly been authorized, had since left the services and on 6th October, 2020, a fresh Resolution has been passed in favour of another employee. In short, learned counsel submitted that the questions of fact

relating to the competency had been raised which called for framing of the issue so that evidence could be led on that point. Hence, it was submitted that there was no error in the impugned order and the petition was liable to be dismissed.

10. In response, the learned counsel for the petitioner submitted that under Order XXIX Rule 1 CPC, any officer of the company could sign the pleadings and contended that the passing of a Board Resolution was completely irrelevant, and therefore, framing of the issue was only a waste of time. Further, since, the legal notice had been issued in 2015 by the respondent, the Board Resolution was not a fabricated document. Hence, it was submitted that the learned Trial Court had erred in framing the additional issue.

11. Merely because the Trial Court framed certain issues, it does not mean that it is precluded from framing additional issues or reframing issues already framed, if it was of the view that such action was required. As observed in the cited case laws, issues are framed in order to guide the parties as to what evidence they must bring on record and it would also assist the court to determine the dispute.

12. Therefore, to say that the learned Trial Court had overstepped its jurisdiction in framing the additional issue would be incorrect. The contention of the learned counsel for the petitioner that the issue framed was unnecessary, as it was a settled question of law that any shortcoming in verification was a curable defect and that procedure cannot defeat the rights of parties, appears to be misplaced. In the instant case, admittedly, when the petitioner had filed the written statement-cum-counter claim on

7th November, 2016, it was unverified and unsigned. When the petitioner moved an application under Order VI Rule 17 CPC to bring on record the signed written statement-cum-counter claim, it was allowed to be taken on record. Thus, to the extent that the learned counsel for the petitioner submitted that absence of signature and verification were curable defects, the petitioner had in fact been permitted to rectify the defects.

13. However, the question that was raised before the learned Trial Court was not with regard to the absence of signatures but the competence of the person who had actually signed the written statement-cum-counter claim. This is different from the technical claim of absence of signatures. It is not as if anybody can sign pleadings and verify them on behalf of the parties. They have to be duly authorized in this regard. That is the question that has been posed by the additional issue. To say that proving the Board Resolution would be a waste of time, possibly reflects the lack of confidence of the petitioner in establishing that the written statement-cum-counter claim has been signed, verified and instituted by a competent person. That only seems to add further justification to the framing of the additional issue. What would be the finding on this issue would be a matter of trial and cannot be decided at this stage. Rather from the submissions of the learned counsel for the respondent, it is more than apparent that facts are required to be proved in respect of the Board Resolution passed in favour of Mr. Vishwanath Kotian.

14. This Court finds no perversity or error in the impugned order calling for interference by this Court.

15. The petition lacks merit and is accordingly dismissed along with the pending application.

16. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 29, 2021

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