

\$~7 (2021)

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

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Date of decision: 18.11.2021

+ **FAO (COMM) 171/2021, 2021 & CM APPL. 38038-9/2021**

MEGHA BOTTLING AND & ORS.

..... Appellants

Through: Mr. Abinash Agarwal, Advocate.

versus

BANKEY BEHARI FOODS

..... Respondent

Through: Mr. Dushyant K Mahant and Ms.
Shivani G Mahant, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

1. The present appeal is directed against the orders dated 23.12.2019 and 12.02.2020, passed by the Learned Additional District Judge [in short "Ld. ADJ"] and Learned District Judge [in short "Ld. DJ"] in C.S. (COMM) No.2141/2019, respectively.

2. On the previous date of hearing i.e., 27.10.2021, we had made the following observations, after hearing the counsel for the appellants/defendants i.e., Mr. Abinash Agarwal:

".....

2. A perusal of the record shows that, an interim order, after the appellants/defendants entered appearance, was passed on 17.09.2019, by the Learned District Judge.

2.1. Mr. Abinash Agarwal, who appears on behalf of the appellants/defendants, says that, a written statement, and an application under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"], was filed by the appellants/defendants.

2.2. Mr. Agarwal states that, the impugned order deals only with the

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appellant no.l's/defendant no.l's application, filed under Order XXXIX Rule 4 of the CPC.

2.3. The impugned order is dated 23.12.2019.

2.4. Furthermore, the record shows that, a review application qua the impugned order dated 23.12.2019, was filed on behalf of the appellant no. 1/defendant no.1, which was dismissed on 12.02.2020.

2.5. The present appeal is directed against both the orders i.e., orders dated 23.12.2019 and 12.02.2020.

3. A perusal of paragraph 14 of the order dated 23.12.2019 shows that, while the appellant no.l's/defendant no.l's application filed under Order XXXIX Rule 4 of the CPC was dismissed, there is an observation made in the said paragraph that the XXXIX Rule 4 application will be taken up with the main suit.

4. We are told that, since the respondent/plaintiff has filed an amended plaint, the appellant no.l/defendant no.l has to file an amended written statement in the matter.

4.1. Mr. Agarwal informs us that, the main suit is listed before the Learned District Judge, on 23.11.2021.

5. Issue notice to the respondent/plaintiff, via all permissible modes, including e-mail.

5.1 Besides this, notice shall also be served on the advocate, who appeared on behalf of the respondent/plaintiff in the trial court.

6. List the matter on 18.11.2021.”

3. Before we proceed further, it is noted that an inadvertent error has crept in paragraph 3 of the aforesaid order dated 27.10.2021, inasmuch as it is stated that the Ld. ADJ, while dismissing the application under Order XXXIX Rule 4 of the CPC, made an observation in the order dated 23.12.2019, that the same will be taken up with the main suit.

3.1 It has been correctly pointed out by Mr. Dushyant K. Mahant, who appears on behalf of the respondent/plaintiff, that a careful reading of the order dated 23.12.2019 would show that the Ld. ADJ has stated that the application under Order XXXIX Rule 4 of the CPC along with its reply, will stand merged with the main suit.

3.2. To that extent, the observations made by us in paragraph 3 of the order dated 27.10.2021, shall stand corrected.

3.3. The other parts of the order dated 27.10.2021, shall remain unaltered.

4. That being said, Mr. Mahant does not dispute the fact that the applications filed by the respondent/plaintiff, under Order XXXIX Rules 1 and 2 of the CPC, are pending consideration before the Ld. ADJ.

4.1. We are informed that there are two applications filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 of the CPC in the main suit, which are pending consideration. We are also told that replies to these applications have not been filed, as yet, by the appellants/defendants.

5. Given this position, both Mr. Mahant and Mr. Agarwal agree that the impugned orders can be set aside and, the matter, remanded to the Ld. ADJ for fresh consideration.

5.1. However, Mr. Mahant adds to what is stated above which is that, pending consideration of the above-mentioned applications, the interim order dated 17.09.2019, passed by the Ld. ADJ, should continue to operate, till the disposal of the two applications, which are referred to hereinabove. Mr Agarwal does not object to such a direction being issued.

6. Accordingly, the present appeal is disposed of, with the following directions:-

- (i) The impugned orders dated 23.12.2019 and 12.02.2020 are set aside.
- (ii) The Ld. ADJ will hear fresh arguments in the applications filed under Order XXXIX Rules 1 and 2 as well as the application filed under Order XXXIX Rule 4 of the CPC.
- (iii) Pending consideration of the applications referred to in clause (ii) above, the interim order dated 17.09.2019 will continue to operate.

7.1. Needless to add that, the Ld. ADJ will render a decision in the aforementioned applications at the earliest, though not later than eight [8] weeks from the date of the receipt of a copy of this judgement.

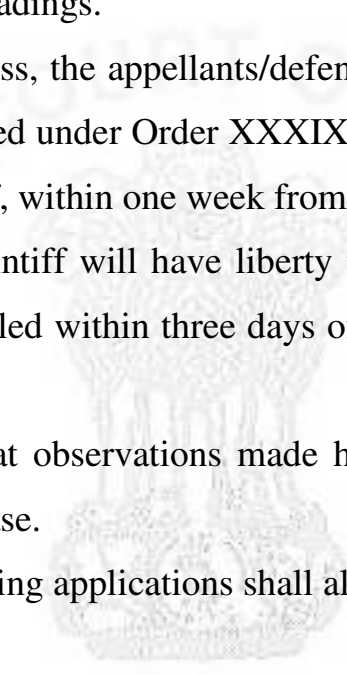
7.2. The timeframe adverted to hereinabove i.e., eight [8] weeks shall commence, after pleadings have been completed in the aforementioned pending applications, before the Ld. ADJ. Parties shall ensure there is no delay in completion of pleadings.

7.3. To hasten the process, the appellants/defendants will file their replies to the applications preferred under Order XXXIX Rules 1 and 2 of the CPC, by the respondent/plaintiff, within one week from today.

7.4. The respondent/plaintiff will have liberty to file rejoinder(s) thereto. The rejoinder(s) will be filed within three days of the receipt of the copy of the replies.

7.5. It is made clear that observations made hereinabove by us will not impact the merits of the case.

8. Consequently, pending applications shall also stand closed.


(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

NOVEMBER 18, 2021/pa

Click here to check corrigendum, if any