

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

% **Date of decision: 28th October, 2021.**

+ **CM(M) 957/2021**

MED FRESHE PVT LTD

..... Petitioner

Through: Mr. Mayank Wadhwa with Mr.
Junaid Qureshi, Advocates.

Versus

**HLL INFRATECH SERVICES
LIMITED & ORS.**

..... Respondents

Through: Mr. Hitesh Sachar, Advocate for R-2
Mr. Nikhilesh Krishnan with Ms.
Tishya Pandey, Advocates for R-1.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No. 38678/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 957/2021 & CM No. 38679/2021 (for stay)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 1st September, 2021 passed by the District Judge (Commercial Court)-02 in CS(COMM) 176/2019, whereby the application filed on behalf of the petitioner seeking waiver of cost imposed by the Trial

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Court, while allowing amendment application of the petitioner, has been dismissed.

4. The suit in question was filed on 23rd May, 2019 seeking permanent and mandatory injunction against the invocation of conditional bank guarantee. Vide order dated 30th May, 2019, the Trial Court rejected the plea of the petitioner for grant of interim injunction, to restrain the defendants no. 1 and 3 in the suit proceedings from invoking the aforesaid bank guarantee. During the pendency of the suit, the bank guarantee was invoked and accordingly, an amendment application was filed on behalf of the petitioner, only limited to the purpose of adding a relief with regard to recovery of the amount invoked under the bank guarantee.

5. Counsel for the petitioner contends that since the amendment was only procedural and consequent to subsequent events, the same should have been allowed without imposition of any costs. He states that no reasons have been given in the order dated 6th March, 2021 for imposition of costs. It is further contended that the impugned order wrongly records that (i) costs of Rs.25,000/- was imposed by the order dated 6th March, 2021, whereas costs of Rs. 20,000/- had actually been imposed; and, (ii) the said amendment application was filed on 20th February, 2020 instead of 20th February, 2021. He further submits that when the amendment application was allowed on 6th March, 2021, the written statement filed by the respondent no. 1 was not on record.

6. Counsel appearing on behalf of the respondent no. 2 on advance notice submits that the written statement filed on behalf of respondent no. 2

was already on record when the amendment application was allowed, however, he cannot seriously dispute the contention that the amendment carried out was only procedural and consequential to the bank guarantee being invoked.

7. The impugned order, while dismissing the application filed on behalf of the petitioner for waiver of costs, records that since the defendants have invested time and labour in contesting the suit and already filed written statement, upon amendment of the plaint, the defendants shall be forced to file the written statement afresh and consequently incur costs for such filing.

8. Ordinarily, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India would be loathe to interfere with orders of this nature passed by the Commercial Court, however, the counsel for the petitioner contends that the costs imposed by the Commercial Court in the present case would have to be borne by the counsel who appeared on behalf of the petitioner before the Commercial Court.

9. The counsel for the petitioner is correct in pointing out that the amendment was necessitated on account of the fact that the bank guarantee was invoked after the filing of the suit and therefore, consequential amendment had to be carried out so as to claim the relief of recovery in respect of the amount invoked under the bank guarantee. No fault can be attributed to the petitioner in this regard so as to justify imposition of costs. No reasons or justifications have been given in the order dated 6th March, 2021 for imposition of costs while allowing the application filed on behalf of the petitioner.

10. In the facts and circumstance of the case, the impugned order passed by the Commercial Court is set aside.
11. The amended plaint be taken on record without payment of costs.
12. The present petition is disposed of in above terms.

OCTOBER 28, 2021
at

AMIT BANSAL, J

