IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 1353 OF 2023
IN
COMMERCIAL SUMMARY SUIT NO. 1477 OF 2019

Good Value Financial Services Ltd. .. Applicant/Original Plaintiff.

In the matter between :
Good Value Financial Services Ltd. .. Original Plaintiff.
v/s.
P & P Associates. .. Defendant

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Mr. Mikhail Behl a/w. Abhishek Adke and Vibha Joshi i/b. Abhishek Adke, for the Applicant/Plaintiff.

Mr. Amrit Joshi, Mr. Kapil Bheda, Mr. Hemal Dedhia, Mr. Prajit Vora, Mr. Navdeep Vora i/b. Navdeep Vora and Associates, for Defendant.

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CORAM : KAMAL KHATA, J.

DATED : 17TH AUGUST,2023.

P.C. :

1. This interim application seeks to amend the plaint to bring on record the revised rate of interest on the principal amount as was mutually agreed between the parties.

2. Mr. Behl, Counsel for the applicant submitted that after filing of the suit, the plaintiff came across a letter dated 11th July, 2019 addressed by the plaintiff to the Defendant, whereby both the

parties agreed to an interest rate of 18% per annum being applied on the loan provided by the plaintiff on quarterly compounding basis with effect from 1st April, 2019. The defendant confirmed the payment of interest and also deducted TDS on the revised rate and the same is also recorded in her books. He submitted that the confirmation of accounts dated 1st April, 2020 for the period 1st April, 2019 to 31st March, 2020 and Form 26AS downloaded from the income tax website www.incometax.gov.in for financial year 2019-20 would evince the defendant's acceptance to novation. He submitted that although the defendant had confirmed the accounts, she failed to make the payment of interest to the plaintiff. In view thereof, it was necessary to carry out amendment to the plaint.

3. He then drew my attention to the letter dated 11th July, 2019 addressed to the defendant, particularly the acknowledgment of the defendant in his own handwriting along with his signature which evinces that although the letter was sent to the defendant on 11/7/2019, it was acknowledged and sent only on 16/8/2019 i.e. after filing the suit. He therefore submitted that the Interim Application be allowed in terms of prayer clause (a).

4. Mr. Joshi, the learned Counsel for the defendant by his reply dated 7th August, 2023 opposed the amendment. He submitted

that the Interim Application is misconceived, frivolous and filed on the basis of the letter that was signed by the husband of the defendant after filing of the suit and hence, there is no cause of action for enhancing the rate of interest.

5. He submitted that the proposed amendment was barred by the law of Limitation since it is filed after a period of 4 years from the date of filing of the suit i.e. 31st July, 2019.

6. He then submitted that the plaintiff is trying to enhance their claim though it was mutually agreed to pay such higher rate of interest only for a limited period, which can be evinced from Form-26 AS Certificate that interest was given at the rate of 18% per annum for only 3 quarters and thereafter, no interest was paid as alleged to have been mutually agreed.

7. He submitted that as per the mutual understanding between the parties, the defendant had paid a sum of Rs. 4,95,25,000/- towards the principal amount after filing of the suit to reduce the principal amount. He submitted that the said amount was cleared after selling all properties given as a security to the plaintiff. He submitted that enhancing the claim was purely an afterthought and if the interest was allowed to be enhanced, it would roughly go to 25 to 27% per annum as a simple interest and even go high and

high at around 35 to 40% per annum as per the time period.

8. He lastly submitted that by introducing the letter dated 11th July, 2019, the plaintiff has sought to alter the basic case pleaded in the summary suit and on that ground alone, unconditional leave to defend deserves to be granted.

9. The learned Counsel relied upon the judgment in the case of ***Khanna Rayon Industries Pvt. Ltd. v/s. Swastik Associates and others*** dated 10th July, 2023 passed in Interim Application No. 5251 of 2022 in Commercial Suit No. 316 of 2020, to submit that the plaintiff was bound by Order XI of the CPC as amended and made applicable to the proceedings under the Commercial Courts Act. It is submitted that the rigors of the Commercial Courts Act cannot be ignored because Order VI Rule 17 of the CPC has not been amended in the context of commercial suit. It is submitted that Order XI Rule 1 (5) mandatorily requires the plaintiff to establish reasonable cause for non disclosure of the document along with the plaint.

10. The learned counsel accordingly submitted that the document was in the custody of the plaintiff at the time of filing of the suit. He submitted that in effect, the applicant would be entitled to annex the document to an application under Order VI

Rule 17 of the CPC and avoid the rigor of Order XI of CPC i.e. applicable to the Commercial Suits. He submitted that assuming that the present suit was a case of urgent filing, the plaintiff ought to have taken leave from the court within a period of 30 days to produce the document and amend the plaint. He submitted that the present application was filed only on 16th August, 2023 i.e. more than 4 years of filing of this suit. There was no justifiable reason that was mentioned in the Interim Application for the unreasonable delay that is caused and therefore, the application ought not to be allowed, as allowing it would run counter to the objects and reasons for enactment of the Commercial Courts Act and specific amendment brought about in the CPC. Thus he prayed for the interim application to be rejected.

11. The learned Counsel for the defendant submitted that the suit was filed on 31st July, 2019 and the letter sought to be introduced by the amendment is dated 11th July, 2019 it is obvious that the plaintiff had possession of the same at the time of filing of the suit. However, no averment with regard to this letter being sent to the defendant is found in the plaint.

12. In rejoinder, learned Counsel for the plaintiff submitted that there is sufficient cause for making this amendment application. It is an admitted fact the defendant had made ad-hoc payments i.e.

prior to the filing of the suit on 26/6/2019 and last of which was made on 6th April, 2022. Payments to the tune of Rs. 4,95,25,000/- were made subsequent to the filing of the suit and therefore since the payments were being made there was no reason to pursue the suit.

13. Moreover, the plaintiff was lenient in view of the ongoing COVID Pandemic, and had given time to the defendant to make further payments. Since the payments stopped, he has filed the Interim Application. It is submitted that there is no delay whatsoever, in taking out the present application. The plaintiff cannot be non-suited for being considerate and offering time.

14. He submitted that it is not a case of urgent filing as sought to be contended by the defendant and therefore, 30 days period would not be attracted as per Order XI Rule 4 of the CPC.

15. Lastly it was contended that Order VI Rule 17 of the CPC would entitle the plaintiff to amend the plaint since the document was received on 16th August, 2019 from the defendant i.e. after filing of the suit. He submitted that the defendant cannot claim benefit of their own wrong.

16. Having heard both the Counsel and having perused the record, in my view, the Interim Application deserves to be allowed.

The contention of the defendant that the plaintiff ought to have made an application within 30 days of filing of the suit as provided under Order XI Rule 4 of the CPC will not be attracted inasmuch as the document although is dated 11th July, 2019 was returned to the plaintiff after due acknowledgment from the defendant on 16th August, 2019 and therefore, it was not in the possession of the plaintiff on the date of filing of the suit. The contention that the document was sent to the defendant and therefore, there ought to have been an averment to that effect cannot be accepted, as it would have no bearing on the plaintiff's suit as the same would be merely one sided communication. The said letter can gain importance only when the same was confirmed and duly signed and resent to the plaintiff. Therefore, the Judgment cited by the defendant in the case of ***Khanna Rayon Industries Pvt. Ltd. (supra)*** is distinguishable on the facts of the present case.

17. The second contention that there was considerable delay in filing application for amendment, also cannot be accepted, since the defendant had admittedly made payments to the plaintiff to the tune of Rs. 4,95,25,000/- almost upto 6th April, 2022 being the last payment made and subsequent to this the payments being made, the time that was given for the defendants to make further payment cannot be held against the plaintiff for taking out this

application.

18. In my view, the principles governing applications seeking amendment of pleadings, moved under Order VI Rule 17 are narrated in the case of ***LIC V/S. Sanjeev Builders***[1]. The judgment carves out exceptions. Suffice to state that the present suit does not fall within the exceptions as carved out therein.

19. Accordingly, the Interim Application is allowed in terms of prayer clause (a).

20. The amendment to be carried out on or before 30th August, 2023. Reply to the amended summons for Judgment be filed by 8th September, 2023.

21. Adjourned to 11th September, 2023 at 3.30 p.m.

22. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

1 2022 SCC Online SC 1128