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A.No.3631 of 2023

in

C.S.No.642 of 2018

P.T.ASHA, J.,

This application has been filed under Order 14, Rule 8 of Madras High Court Original Side Rules, 1956 read with Order XIV Rule 5 CPC for framing additional issues.

2.The applicant would submit that after the evidence had been recorded and when the matter was posted for arguments he sought a change of vakalat from his earlier counsel and appointed the present counsel. While he was discussing the evidence and the details of the case with the present counsel, it was noticed that there was no issue framed with reference to breach. Therefore, the petitioner was advised to file the present application.

3.The framing of this issue is very crucial as it is a vital issue that has to be considered to determine the dispute between the parties. There is no serious contest on the side of the defendants.



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4.Considering the fact that the suit itself is for recovery of money on account of the loss that the plaintiff has sustained by reason of the breach on the part of the defendants, the application has to be necessarily allowed.

5.In an un-reported judgement in **CS.(Comm) 57/2017, I.A.15601/2017 (for directions u/s.151 of CPC) – Saregama India Limited Vs. Zee Entertainment Enterprises Limited** dated 28.04.2023, Delhi High Court was called upon to consider an application filed under Order XIV Rule 5 of the CPC for framing an additional issue. The learned Judge invoking the powers under Order XIV Rule 5 has framed the additional issue though there was a delay. The learned Judge had observed as follows while allowing the application:-

"14. Undoubtedly, there is an inordinate delay on behalf of the plaintiff in moving the present application. However, in view of the provisions of Order XIV Rule 5 of the CPC, an application for framing additional issues cannot be rejected only on the ground of delay, if otherwise, the Court is of the view that additional issues are required to be framed in the facts and circumstances of



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the case and such issues are necessary for determining the controversy between the parties.

15. In view of the above, I am of the considered view that the additional issue as sought to be framed is essential for the just and effective adjudication of the controversy in the present case and therefore, has to be framed."

Similar is the situation in the instant case. Therefore, the application is allowed and the following additional issue is framed "*Whether the parties have committed a breach of the terms of the contract?*"

6. Both the learned counsel would submit that they have no additional evidence to be let in on the issue now framed.

7. Post the matter for oral argument on 08.08.2023.

shr

25.07.2023



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