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

% Judgment delivered on: 20.03.2023

+ CM(M) 442/2023

DAINA TECHNO SOLUTIONS PVT LTD Petitioner

versus

HEMANT VERMA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Jai Sahai Endlaw and Mr. Ashish Kumar, Advocates

For the Respondent : Mr. Ravi Kapoor and Mr. Rishav Ambastha, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL No. 13224//2023

1. This is an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. Application stands disposed of.

CM(M) 442/2023 & CM APPL. 13223/2023

4. The petition is taken up for final disposal with the consent of

parties.

5. The petitioner challenges the order dated 17.02.2023 passed in CS(Comm) No. 295/2020 titled '*M/s. Daina Techno Solutions Pvt. Ltd vs. Hemant Verma*', whereby the application filed by the petitioner/plaintiff under Section 151 of CPC, 1908 seeking recall of order dated 06.12.2022 wherein the learned Trial Court had directed the respondent/counter claimant to separate the counter claim from the written statement and the petitioner claims that in the garb of that, the counter claimant had inserted additional prayers, was dismissed.

6. Mr. Jai Sahai Endlaw, learned counsel for the petitioner/plaintiff, who was the defendant in the counter claim, submits that once particular prayers have been already sought for in the original counter claim, without filing an appropriate application seeking amendment, the respondent/counter claimant could not have inserted/added additional prayers apart from those which were already taken in the original counter claim.

7. Mr. Endlaw, submits that the learned Trial Court procedurally committed an error by permitting the said additional prayers to be added and the counter claim be filed as it is, without directing the respondent/counter claimant to move appropriate application seeking amendment to the prayers. Hence, the present petition.

8. Mr. Ravi Kapoor, learned counsel for the respondent/counter claimant took this Court through the averments in the original counter claim and submits that those additional prayers which have been made in the separate counter claim, are arising within the four corners of, and within the pleadings in the counter claim. He further submits that since

the suit is at a nascent stage, such inclusion would not require a formal application of amending the counter claim.

9. This Court has considered the submissions of learned counsel for the parties and perused the original counter claim as well as the new counter claim filed on the strength of order dated 01.11.2022.

10. In order to appreciate the controversy, it would be apposite to extract the prayer clause of the original written statement-cum-counter claim and the fresh separated counter claim which are as under:-

“Original counter claim

32. In the facts and circumstances as aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass a decree in favour of the Defendant/Counter Claimant for rendition and accounts and against the Plaintiff/Respondent, Mr. Manoj Kumar Rai & others and direct then to pay the balance amounts along with pendente lite and future interest @ 18% per annum, and

ii. Pass a judgment and decree in favour of the Counter Claimant and against the Plaintiff thereby ordering restitution of benefits purportedly derived by the Plaintiff being possession of substantial portions of the said property, to Defendant/Counter Claimant, under the purported Agreements dated 22.05.2015.

iii. Pass a decree awarding the litigation cost incurred by the Defendant/Counter Claimant; and

iv. Pass any such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Fresh Counter Claim

In the facts and circumstances as aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass a Decree of Declaration in favour of the Counter Claimant and against the Respondent declaring that the alleged documents being inter alia Advance Receipt Agreement to Sell & Purchase dated 22.05.2015, affidavits and Receipt are forged, fabricated, false documents and void ab initio;

ii. Pass a Decree of Permanent Injunction in favour of the Counter Claimant and against the Respondent and thereby restraining the Respondent from acting on the basis of documents being inter alia alleged Advance Receipt Agreement to Sell & Purchase dated 22.05.2015, Affidavits and Receipt;

iii. Pass a decree in favour of the Counter Claimant for rendition of accounts against inter alia between Counter Claimant, Respondent, its alter ego Sh. Mr. Manoj Rai & others and direct them to pay the balance amounts along with pendent lite and future interest @ 18% per annum;

iv. Pass a Decree of Declaration in favour of the Counter Claimant and against the Respondent that there is no money due and outstanding in favour of the Counter Claimant and against the Respondent;

v. Pass a judgment and decree in favour of the Counter Claimant and against the Plaintiff thereby ordering restitution of benefits purportedly derived by the Respondent being possession of substantial portions of the said property, to Counter Claimant, under the alleged Advance Receipt Agreement to Sell & Purchase dated 22.05.2015, Affidavits and Receipt;

vi. Pass a decree awarding the litigation cost incurred by the Defendant/Counter Claimant; and

vii. Pass any such other or further order as this Hon 'ble Court may deem fit and proper in the facts and circumstances of the present case.”

It is apparent on the face of the pleadings, in that, the fresh counter claim, that three additional prayers, i.e., (i), (ii) and (iv) have been added, though the same may arise out of the pleadings, forming part of the original counter claim.

11. The fundamental flaw in the order of the learned Trial Court while dismissing the application filed by the petitioner/plaintiff, who is the defendant in the counter claim, is that there could not have been any amendment to either pleadings or to the prayer clause of the fresh counter claim as directed by the Trial Court's order, since the only manner in which fresh prayers or paragraphs in a plaint or a counter claim can be added, is by virtue of an appropriate application under the Code of Civil Procedure, 1908 seeking amendment and such application being allowed in accordance with law.

12. Since, admittedly, there was neither an application seeking such prayer nor any such orders permitting the respondent/counter claimant to add more prayers in addition to those in the original counter claim, the impugned order is unsustainable in law and thus the fresh counter claim as filed could not have been taken on the record.

13. Accordingly, the fresh counter claim is taken off the record of the learned Trial Court.

14. This direction, however, is without prejudice to the rights and

contentions of the counter claimant to seek amendment by way of an appropriate application under the Code of Civil Procedure, 1908 as available in law which may be considered in accordance with law by the learned Trial Court. The same may be filed within two weeks from today and the application so filed may be disposed of by the learned Trial Court in all earnest on or before 15.05.2023.

15. The learned Trial Court shall also bear in mind the judgment rendered by the Hon'ble Supreme Court in '*LIC vs. Sanjeev Builders Pvt Ltd & Ors*' reported in (2018) 11 SCC 722, whereby the guidelines as to the manner in which the amendments are allowed, is succinctly crystallized.

16. It is needless to observe that the learned Trial Court shall reckon the time to file the written statement, to the counter claim from the date when the amended counter claim is filed and taken on record.

17. With the aforesaid terms, the petition alongwith pending application, is disposed of with no orders as to costs.

TUSHAR RAO GEDELA, J

MARCH 20, 2023

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