



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 12.01.2024
Judgment pronounced on: 04.03.2024

+ CM(M) 72/2024, CM APPL. 2050/2024, CM APPL. 2049/2024

GANPATI INDUSTRIES

..... Petitioner

Through: Mr. Akshit Sachdeva and Ms. Shreya Gupta, Advs.

versus

SPP FOOD PRODUCTS PVT. LTD.

..... Respondent

Through: Mr. Bharat Arora, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India directed against the impugned order dated 04.09.2023 passed by the Learned Additional District Judge-11, Central District, Tis Hazari Courts, New Delhi (hereinafter referred to as "Trial Court") in CS DJ 613082/2016, titled as '*M/s S.P.P Food Products Pvt. Ltd vs. M/s Ganpati Industries & Anr.*' whereby the learned Trial Court allowed the application filed by the respondent under Order VI Rule 17 of the Civil Procedure Code, 1908 (hereinafter referred to as "CPC") for amendment of the plaint. The petitioner herein is defendant no. 1 before the learned Trial Court and the respondent is the plaintiff who has instituted a suit for recovery of Rs. 5,92,281/- along with interest under Order XXXVII of CPC.



2. The relevant facts for the purpose of adjudication of the present case are that M/s Ganpati Industries/petitioner herein is a firm which was allegedly managed and controlled by Mr. Pawan Jain and Mr. Pankaj Jain with its registered office at F-13, Ganpati Plaza, Sector-7, Sikandra, Agra. On the other hand, S.P.P Food Products Pvt. Ltd/respondent herein is a private limited company which deals in production of non-woven fabric for packing material with its registered office at 10678, Jhandewalan Road, Nabi Karim, Near Shankar Paio, Delhi.

3. Petitioner approached the respondent to purchase non-woven fabric for packing material. Thereafter, both the parties entered into an agreement vide which the respondent agreed to supply the said goods and the petitioner agreed to make the payment within 15 days of the purchase. Further, the petitioner also agreed to pay interest of 18% per annum in case of delay in payment.

4. As per the agreement, respondent supplied the said goods which were duly received by the petitioner through various invoices. Petitioner initially made a few payments and then stopped making payments. On 10.09.2014, the respondent served a legal notice upon the petitioner to make the payment of the outstanding amount of Rs.5,92,281/- along with interest of 18% per annum. Subsequently, Mr. Pawan Jain, who was the authorised representative of defendant no. 1/petitioner herein issued six cheques on behalf of the petitioner in favour of the respondent for a total sum of Rs. 5,92,281/-between the period ranging from 20.09.2014 to 23.05.2015 with the assurance that the same shall be honoured on their presentation.



5. Respondent presented the said cheques for encashment to his bank i.e. State Bank of India and all the cheques were returned as unpaid with remarks “insufficient funds” via returning memo dated 26.05.2015. Therefore, on 30.01.2016, the respondent initiated a suit for recovery of money against the petitioner through Mr. Pawan Jain as well as Mr. Pankaj Jain (defendant no. 2 before the learned Trial Court). A separate proceeding for dishonour of cheques under section 138 of Negotiable Instrument Act, 1881 (hereinafter as ‘N.I. Act) was also initiated.

6. On 31.07.2016, the respondent preferred an application under Order I Rule 10 of CPC for impleadment of Ms. Renu Jain as proprietor of M/s Ganpati Industries stating that it has come to their knowledge that Mr. Pawan Jain is not the registered owner of the firm even though the said firm was run by him and Mr. Pankaj Jain. On 28.02.2020, the respondent withdrew the suit for recovery of money against Mr. Pawan Jain in view of observations made by the learned Additional District Judge-06, during the proceedings under section 138 of the N.I. Act that Mr. Pawan Jain was not the signatory of the disputed cheques and had no business dealing with the respondent. Further, on request of the learned counsel for the respondent, the present suit was converted to ordinary suit.

7. Thereafter, on 17.05.2023, the respondent filed an application under Order VI Rule 17 of CPC seeking amendment of plaint. Subsequently, the respondent withdrew both the applications filed under Order I Rule 10 and Order 6 Rule 17 of CPC. On 01.09.2023, the respondent filed another application under Order VI Rule 17 of CPC seeking liberty to amend the present plaint with regard to M/s Ganpati Industries being represented



through its partners namely Ms. Renu Jain and Ms. Swati Jain. Further, the respondent also prayed for deleting Mr. Pankaj Jain from array of parties. The learned Trial Court vide impugned order dated 04.09.2023 allowed the aforesaid application. It is in this background, the impugned order dated 04.09.2023 is challenged by way of the present petition.

Submissions by the Petitioner:

8. Mr. Akshit Sachdeva, learned counsel for the petitioner submitted that the learned Trial Court unusually allowed the application moved by the respondent to amend the plaint on the very same date, it was filed, without even affording the petitioner an opportunity to submit its objections to the said amendment. The application for amendment of the suit was passed in a routine and mechanical manner, without appreciating the nature of amendment sought to be made and the lackadaisical approach of the respondent in moving the application.

9. Learned counsel submitted that respondent's amendment application could not lie because the respondent, in the garb of being the "*dominus litus*" had initially withdrawn its claim against the petitioner while proceeding against Mr. Pankaj Jain, original defendant no. 2 and subsequently, disarrayed Mr. Pankaj Jain and again arrayed the petitioner as a sole defendant in its amendment application. In the meanwhile, the respondent moved an application under Order I Rule 10 CPC for impleadment of Ms. Renu Jain as proprietor of petitioner concern but withdrew the applications under Order VI Rule 17 and Order I Rule 10 of CPC and thereby abandoned its claim against the petitioner. Even if, it is assumed that the claim against the petitioner could lie, the learned Trial



Court ought to have appreciated that the amended plaint creates a fresh cause of action based on new facts and documents which were entirely missing in the original plaint. Therefore, the learned Trial Court ought to have decided the amendment application on merits.

10. It is further submitted that the respondent has not stated any reason to justify the inordinate delay in bringing on record the crucial facts. The new facts in the amended plaint are that the petitioner through Ms. Renu Jain had allegedly made payments to the respondent on 18.01.2013 via cheques dated 19.11.2013, 22.11.2013 and 07.03.2014 amounting to Rs. 1,50,000/-, Rs. 1,00,000/- and Rs. 1,50,000/- respectively which were allegedly dishonoured. Due to the said dishonour, six cheques were issued by Mr. Pankaj Jain, the representative of Jain and Co., amounting to Rs. 5,92,281/- which also got dishonoured leading to the filing of the present suit.

11. It is submitted by the counsel of the petitioner that the learned Trial Court failed to hold that the said amendment will operate from the date of filing of the amendment application and not from the date of filing of the original suit. The new facts added in the amended plaint pertain to the year 2013 & 2014 and the respondent has not given any reason as to why these facts were not stated in the original suit. Therefore, the respondent cannot be allowed to benefit from the *doctrine of relation back* and the amended plaint should have been considered from the date of the amendment itself.

12. It is further submitted that the respondent failed to exercise due diligence while filing the original suit. During the course of proceedings, the respondent adopted a hit and trial approach by adding or deleting the



persons from array of parties and making amendments based on its whims and fancies.

13. It is submitted that the respondent failed to put forth a case against Ms. Renu Jain in a timely manner and later by way of an application under Order 6 Rule 17 CPC belatedly introduced new facts and documents against the petitioner. Further, it is submitted that the learned Trial Court should not have allowed the aforesaid application because the same is barred by law of limitation. Reliance placed on *LIC vs. Sanjeev Builders*, 2022 SCC OnLine SC 1128 and *L.C. Hanumanthappa vs. H.B. Shivakumar*, (2016) 1 SCC 332.

14. It is also submitted that the new facts and documents introduced by the respondent by way of the amended suit are not necessary for determining the real issue between the parties herein. Reliance is placed by the learned counsel on *LIC vs. Sanjeev Builders*, 2022 SCC OnLine SC 1128 in support of the above contentions.

Submissions by the Respondent:

15. Invalidating the submissions as addressed on behalf of the petitioner, the learned counsel for the respondent submitted that the present petition is frivolous and moved with an intention to delay the proceedings of the suit pending before the learned Trial Court.

16. Mr. Bharat Arora, learned counsel submitted that the petitioner had filed the application under Order VI Rule 17 CPC before the respondent was summoned and since the amendment was necessary to resolve the real controversy between the parties, thus after considering the submissions of



the respondent, his application was allowed by the learned Trial Court, therefore, the impugned order deserved to be upheld.

17. The main contention of the petitioner is twofold. First, the application for amendment of the suit ought to have been considered on merits and should have been allowed/rejected only after affording an opportunity to both the parties therein to put forth their respective submissions; and second, the learned Trial Court ought to have clearly stated that the amendment, if allowed, will not relate back to the date of filing of the original suit, and the lack of such observation by the learned Trial Court causes serious injustice to the petitioner herein, inasmuch as it takes away the available legal defences to the petitioner accrued and concretized with passage of time making the impugned order illegal, perverse and against the principles of natural justice.

18. The law relating to the amendment is well settled by the Hon'ble Supreme Court in various judgments. In ***Revajeetu Builders and Developers v. Narayanaswamy & Sons***, (2009) 10 SCC 84; wherein the Apex Court, after examining the entire previous law on the subject, culled out the following principles in paragraph 63 of the judgment which reads as under (SCC page 102):-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;



(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

19. The question here is not mere of impleadment of a new party or mere amendment of the plaint but the question here is simplicitor to identify the petitioner as a partnership firm and whether it is necessary to implead the individual partners of the said partnership firm. It is not in dispute that petitioner is a partnership firm and Mrs. Renu Jain is just one of its partners.

20. In this regard Order XXX Rule 1 CPC assumes importance which is reproduced as under:-

“Suing of partners in name of firm.-

(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.”

21. In *Purushottam Umedbhai and Co. v. Manilal and Sons*, 1960 SCC OnLine SC 126, the Apex Court held as under:-



“7.Before the introduction of Order XXX in the Code of Civil Procedure apparently suits were instituted, particularly in the Mofussil courts, in the name of a firm or were instituted against a firm in the firm name and no objection was generally taken. Presumably this practice was largely based on the assumption that the suit concerned was either by all the partners of the firm or against all the partners of the firm. If, however, an objection were to be taken that a suit in the name of a firm was not maintainable because it had no legal entity, the courts would have to decide whether the suit had been instituted by non-existent persons. If so, the suit was not maintainable. In the case of *Kasturchand Bahiravdas v. Sagarmal Shriram* [ILR 17 Bom 413] which was before the introduction of Order XXX in the Code, the suit had been brought in the name of the firm *Kondanmal Sagarmal* by its manager *Sagarmal Shriram*. The defendants objected that one *Malamchand* was also a partner in the firm and should be made a party. He was accordingly added as a plaintiff on the 27th of January, 1888. The defendant then contended that the suit was barred under Section 22, Limitation Act. It was held by the Bombay High Court that it was a case of misdescription and not of non-joinder for the action was brought in the name of the firm by its manager. The introduction of Order XXX into the Code prevents such an objection being taken because it permits two or more persons carrying on business of the firm to sue or be sued in the name of the firm but the firm must be carrying on business in India. The introduction of this provision in the Code was an enabling one which permitted partners constituting a firm to sue or be sued in the name of the firm. This enabling provision, however, accorded no such facility or privilege to partners constituting a firm doing business outside India. The existence of the provisions of Order XXX in the Code does not mean that a plaint filed in the name of a firm doing business outside India is not a suit in fact by the partners of that firm individually.

8. Section 4 of the Indian Partnership Act, 1932, hereinafter referred to as the Act, states that:

“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually ‘partners’ and collectively ‘a firm’ and the name under which their business is carried on is called the ‘firm name’.”

It is clear from this provision of the Act that the word “firm” or the “firm name” is merely a compendious description of all the partners collectively. It follows, therefore, that where a suit is filed in the name of a firm it is still a suit Order by all the partners of the firm unless it is proved that all the partners had not authorized the suit. A firm may not be a legal entity in



the sense of a corporation or a company incorporated under the Indian Companies Act but it is still an existing concern where business is done by a number of persons in partnership. When a suit is filed in the name of a firm it is in reality a suit by all the partners of the firm. If O. XXX had not been introduced into the Code and a suit had been filed in the name of a firm it would not be a case of a suit filed by a non-existent person. It would still be a suit by the partners of a firm, the defect being that they were described as a firm. In order to clarify matters a court would permit an amendment by striking out the name of the firm and replacing it with the name of the persons forming the partnership. It would be a case of misdescription. Even if the provisions of Order 1, Rule 10 and Order VI, Rule 17 did not strictly apply the amendment could be permitted under Section 153 of the Civil Procedure Code because it was not a case of either adding parties or substituting parties. The High Court referred to a number of decisions to which no particular reference need be made but they do support the view taken by the High Court that in the present case the plaintiff described in the plaint as the firm of Manilal & Sons was a mere misdescription capable of amendment and not a case where a plaint had been filed by a non-existent person and therefore a nullity.

9.It is clear, therefore, that the provisions of Order 30, Rule 1 and Rule 2 are enabling provisions to permit several persons who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of Order 30, being enabling provisions, do not prevent the partners of a firm from suing or being sued in their individual names. These rules also do not prohibit the partners of a firm suing in India in their names individually although they may be doing business outside India. Indeed, this was not disputed on behalf of the appellant. Since, however, a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons who, as partners, are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If, however, under some misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted is by them, they being known collectively as a firm. It seems, therefore, that a plaint filed in a court in India in the name of a firm doing business outside India is not by itself a nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purposes of the Code of Civil Procedure. In these circumstances, a civil court could permit, under the provisions of Section 153 of the Code (or possibly under Order VI, Rule 17, about which we say nothing), an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the court



in determining the real question or issue between the parties. Strictly speaking Order 1, Rule 10(1) has no application to a case of this kind because the suit has not been instituted in the name of a wrong person, nor is it a case of there being a doubt whether it has been instituted in the name of the right plaintiff. The provisions of Order 1, Rule 10(2) also do not apply because it is not a case of any party having been improperly joined whose name has to be struck out or a case of adding a person or a party who ought to have been joined or whose presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The suit has been from its very inception a suit by the partners of the firm and no question of adding or substituting any person arises, the partners collectively being described as a firm with a particular name.”

22. In the case at hand, this Court finds that defendant no. 1/petitioner herein has been impleaded as a partnership firm. The factum of defendant no. 1 being a partnership firm is not in dispute. Mrs. Renu Jain is one of its partners is not in dispute. The defendant no. 1 can be sued in its name in the terms of Order XXX Rule 1 CPC. As held by the Apex Court in ***Purushottam Umedbhai and Co. v. Manilal and Sons*** (supra), Order I Rule 10 CPC has no application to a case of this kind because the suit has not been instituted in the name of wrong person. Thus, the applicability of relation back to the date of institution cannot be disputed. The amendments sought are imperative for the proper and effective adjudication of the case since plaintiff is only seeking to elaborate upon the averments already made in the plaint and refusing the amendment application would lead to injustice.

23. It is settled law that while allowing amendment, the merits of the case are not to be seen. The petitioner is yet to file its written statement, upon amendment of the plaint and it is open to it to take all pleas available in law. Rather on 04.09.2023, the petitioner entered appearance through their counsel, accepted the service and sought time to file written statement. The



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order dated 04.09.2023 was passed in the presence of the counsel for the petitioner. Therefore, considering the facts of the matter at hand with reference to the abovesaid considerations, it is clear that there is no infirmity in the order of the learned Trial Court. Consequently, the instant petition along with pending applications stands dismissed.

SHALINDER KAUR, J.

MARCH 04, 2024
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