



2024:DHC:6758



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 03rd September, 2024***
+ **CM(M) 852/2023 & CM APPL. 26798/2023**
RAMESHWAR DAYAL THROUGH HIS CONSTITUTED POWER
OF ATTORNEY MANAVDEEP SINGH

.....Petitioner

Through: Mr. Pratysh Sharma, Advocate.

versus

HEMANT KUMAR

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court. He had earlier filed a regular suit for recovery of Rs. 4,00,000/- along with interest etc. Such suit was earlier pending before a regular Court but after creation of Commercial Courts, such suit was transferred to District Judge (Commercial Courts) and was received by said Court on 17.12.2019.
2. By that time, the defendant had already been proceeded against *ex-parte* and the case was already at the stage of final arguments.
3. During the course of arguments, two applications were moved, from the side of the plaintiff, one was with respect to amendment in the plaint and the other was for placing on record additional documents which was also,



reportedly linked with the aforesaid proposed amendment.

4. By virtue of application moved under Order VI Rule 17 CPC, the petitioner claimed that the defendant had though admitted his liability to pay Rs. 4,00,000/- to the plaintiff and that the said amount had been earlier paid in cash by the plaintiff to the defendant as per the request of the defendant, but due to some oversight and inadvertence in relevant para i.e. para 8 of the plaint, it has been mentioned that such amount was deposited by the plaintiff through cheque, whereas it should have been mentioned that such amount was deposited in cash.

5. Simultaneously, by virtue of another application, *albeit*, moved under wrong provision of law, the petitioner/plaintiff, merely, wanted to place on record a statement of his bank account in order to show that there was sufficient money in his bank account before 05.12.2012 and also in order to show the withdrawal of the amount.

6. As already noticed above, the defendant was being proceeded against *ex-parte*. When the learned Trial Court took up both the aforesaid applications for consideration, referring to the spirit behind Order XI Rule 1 CPC, as applicable to Commercial Courts, it went on to observe that the plaintiff was duty-bound to file all such documents in its power, possession, control or custody. It is also observed that the applications were moved only at the fag end of the trial and no reason has been assigned, as to why at any earlier point of time, if the amendment was necessary and if the documents were necessary, no step was taken.

7. It also observed that no explanation had been given in this regard even



before the closing of evidence by the plaintiff and learned Trial Court observed that the plaintiff cannot be permitted to plug any lacunae/loopholes by amending the plaint after conclusion of the evidence. It was in the above said backdrop that both the aforesaid applications were dismissed with cost.

8. When the petition was filed before this Court, notice was directed to be served upon respondents and as per order dated 22.03.2024 passed by this Court, since the process was refused, to be accepted, they were deemed to be served.

9. As already noticed, when the case was transferred to the commercial court, the case was already at the stage of final arguments and, therefore, before the above said cut-off date when the suit was received on transfer by the Commercial Court, the stringent and rigorous provisions contained in the Commercial Courts Act were not applicable.

10. It has been apprised that thereafter on account of pandemic of Covid-19, the plaintiff could not take any step with the requisite alacrity and swiftness. Though, fact remains that during the ongoing pandemic only, the said applications were moved before the learned Trial Court in the month of July 2021.

11. As already noticed, the defendant/respondent does not seem to be interested in participating in the proceeding and it is quite evident that the amendment is with respect to one word only in the plaint and the documents which are being sought to be placed on record, have also, somewhat, co-relation with such amendment.



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12. Undoubtedly, the Courts generally do not permit amendment when the case is already at the stage of trial but in the case in hand, the situation is little different as the suit was earlier pending before a regular Court and was transferred to a Commercial Court when it was already at the stage of the final arguments and moreover, the suit is being proceeded against *ex-parte*.

13. Keeping in mind the overall facts and circumstances of the case, the petition is hereby allowed and resultantly, the petitioner is permitted to amend the suit and also to place on record the documents in terms of the applications moved by him in this regard.

14. The present petition stands disposed of in the aforesaid terms and the petitioner would be at liberty to take requisite steps and learned Trial Court shall proceed further with the matter in accordance with law.

(MANOJ JAIN)
JUDGE

SEPTEMBER 3, 2024/sw