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

% ***Date of decision: 28th October, 2024***

+ CM(M) 3730/2024 & CM APPL. 63512-63513/2024

SHAHENSHA ENTERPRISES & ANR.

.....Petitioner

Through: Mr. Mohd. Rashid and Mr. Shivam
Sharma, Advocates.

versus

SHREE SAI RAM TRADERS

.....Respondent

Through: Mr. Subhash Chawla, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a *commercial suit* and is aggrieved by order dated 23.09.2024 whereby learned Trial Court has permitted the plaintiff to amend his suit.
2. Learned counsel for respondent herein (plaintiff before the learned Trial Court) also appears on advance notice
3. For the sake of convenience I would be referring to the parties as per their nomenclature before the learned Trial Court and, therefore, petitioner herein shall be referred to as 'defendant' and respondent herein as 'plaintiff'.
4. The plaintiff had filed a suit for recovery and in its such suit, it was



averred that there was liability of Rs. 51,83,701/- as per the ledger account. However, it was also mentioned that the defendant had issued various cheques for payment and the worth of these cheques was Rs. 27,00,000/- for which the plaintiff had already sent notices under Section 138 of Negotiable Instruments Act, 1881.

5. It seems that though the total alleged outstanding amount was of Rs. 51,83,701/- but when the suit was filed, for the reasons best known to the plaintiff, it did not seek recovery of the above said amount of Rs. 27,00,000/- covered under the stated bounced cheques and, merely confined the relief to Rs. 24,83,701/- .

6. The plaint, signed on 04.09.2021, was accordingly filed.

7. The written statement was also filed by the defendant.

8. However, it seems that on account of change in the counsel, the plaintiff moved an application under Order VI Rule 17 read with Section 151 CPC and in such application it was claimed that it was on account of some mistake on the part of the previous counsel that the above said sum of Rs. 27,00,000/- was excluded from the scope of suit for recovery and, therefore, it was prayed that the plaintiff may be permitted to amend his suit accordingly.

9. Such amendment was allowed. According to learned counsel for defendant, such amendment should not have been allowed as it defeats the provision of limitation.

10. Few other amendments were also sought which were claimed formal in nature by the plaintiff.



11. However, learned counsel for the defendant states that one of the amendments sought is very material as by way of amending Para 2 of the plaint, the plaintiff has rather changed the entire factual scenario by taking a 'new stand' that the cause of action had arisen within the territorial jurisdiction of Delhi and such stand was never taken in the plaint earlier.

12. Learned counsel for respondent/plaintiff states that amendment in Para 2 is, merely, clarificatory in nature and since he does not want to delay his own suit, he would drop the amendment sought with respect to para 2 in the plaint. He further states that he would have no objection if '*issue with respect to limitation*' is left open, in context of relief related to Rs. 27,00,000/-, to be decided by learned Trial Court at appropriate stage.

13. The case is still at the stage of pleadings and trial is yet to begin.

14. Be that as it may, in view of the above, learned counsel for the defendant states that he is left with no grievance in the matter and the petition be dispose of.

15. Accordingly, the present petition is disposed of with the direction that the impugned order of amendment stands modified to the following extent:-

- i. The issue of recovery of Rs. 27,00,000/- would be subject to law of limitation and the defendant would be at liberty to take appropriate objection in this regard and learned Trial Court would decide the same at appropriate stage, in accordance with law.
- ii. Para-2 of the plaint would remain unaltered and same as it was at the time of institution of suit.



16. In order to obviate any further complication, the plaintiff is permitted to file amended plaint in terms of the above said observations within 10 days from today and defendant would be at liberty to file written statement to the above said amended plaint within four weeks thereafter.

17. The petition stands disposed of in the aforesaid terms.

18. No order as to costs.

(MANOJ JAIN)
JUDGE

OCTOBER 28, 2024/sw