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SooperKanoon Citation : sooperkanoon.com/694691

Court : Delhi

Decided On : May-06-1997

Reported in : 68(1997)DLT14; 1997(42)DRJ313; (1998)118PLR66

Judge : M.K. Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Interim Application No. 6901 of 1996 and Suit No. 1448 of 1996

Appellant : Dominant Offset Pvt. Ltd.

Respondent : Adamovske Strojimy A.S.

Advocate for Pet/Ap. : Arun Jaitley,; Mukul Rohatagi,; Maninder Singh,;

Judgement :

M.K. Sharma, J.

(1) This is an application filed by the petitioner under Order 6, Rule 17 of the Civil Procedure Code praying for amendment of paragraph 13 of the petition. The petitioner has filed a petition in this Court under Section 20 of the Arbitration Act. In paragraph 13 of the petition, the petitioner stated thus :

'13.As regards respondent No. 2 Adamovske Strojimy A.S., 67904 Adamov, Czech Republic, the petitioner in 1982 entered into an agreement for manufacture, use,

assemble and sale of one colour offset printing machines which expired in 1990. In the year 1986, during the subsistence of the previous agreement, the petitioner entered into another agreement with the said respondent for manufacture, use, assemble and sale of two colour offset printing machines which is due to expire in July, 1994. During the year, 1992, by virtue of a privatisation process, the original Adast Company at Adamov was divided into three entity independent companies.....'

After filing of the aforesaid petition with the aforesaid contentions therein, the respondent No. 2 has filed its written statement. Thereafter, the petitioner has preferred the present application wishing to amend the aforementioned statement made in paragraph 13 of the petition. According to the petitioner, the aforesaid statement that the said agreement would expire in July, 1994 is an inadvertent error and a bona fide mistake and thereforee under the present application the petitioner has sought for deletion by way of amendment of the words 'which is due to expire in July 1994'. The petitioner now desires to get the said paragraph 13 substituted as under:

'13.As regards respondent No.2 Adamovske Strojimy A.S., 67904 Adamov, Czech Republic, the petitioner in 1982 entered into an agreement for manufacture, use, assemble and sale of one colour offset printing machines which expired in 1990. In the year 1986, during the subsistence of the previous agreement, the petitioner entered into another agreement with the said respondent for manufacture, use, assembly and. sale of two colour offset printing machines. During the year 1992, by virtue of a privatisation process, the original Adast Company at Adamov was divided into three entity independent companies.....'

(2) The respondents No. 2 to 5 have filed their reply to the aforesaid application opposing the prayer for amendment. It has been stated in the said reply that there is a clear admission of fact by the petitioner in the said paragraph and that the aforesaid admission cannot be said to be a mistake which if allowed would cause great prejudice to the respondents. According to the learned Counsel, if such admission is allowed to be withdrawn, the same would change the nature and scope of the entire case and thereby would affect the rights of the respondents to

defend.

(3) I have heard the learned Counsel appearing for the parties. The Counsel drew my attention to various decisions of this Court as also of the Supreme Court on the law relating to amendment of plaint and written statement. Reference has been made to the decision of the Supreme Court in *Panchdeo Narain Srivastava v. Kum. Jyoti Sahay*, : AIR 1983 SC462 and *Akshaya Restaurant v. P. Anjanappa & Another*, reported in : AIR 1995 SC1498 . In *Panchdeo Narain Srivastava (supra)*, it is held by the Supreme Court that any admission made by a party may be withdrawn or may be explained away. It was further held that it cannot be said that by amendment, an admission of fact cannot be withdrawn. In the said case; the plaintiff described himself in the plaint as a son of the uterine brother of one person. Subsequently, the plaintiff moved an application for amendment of the plaint inter alias seeking deletion of the word 'uterine' from the plaint. The Trial Court granted the application for amendment. The High Court in revision, however, set aside the order granting amendment, observing that the deletion of the word 'uterine' has some significance and may work in favor of either side to a very great extent. The Supreme Court held that the trial Judge, granting the application for amendment, was satisfied that in order to effectively adjudicate upon the dispute between the parties, amendment of the pleadings was necessary and, therefore, the High Court ought not to have interfered in its revisional jurisdiction. In the said case. Supreme Court also referred to a decision in *Ganesh Trading Co. v. Moji Ram* : [1978]2SCR614 wherein the Supreme Court after a review of number of decisions speaking through Beg, C.J. observed that procedural law is intended to facilitate and not to obstruct the Court of substantive justice. In *Akshaya Restaurant (supra)*, the Supreme Court has held that it is settled law that even an admission can be explained and even inconsistent pleas can be taken in the pleadings. In the said case, in paragraph 6 of the written statement, a definite stand was taken with regard to an agreement stating that the agreement was for sale. Subsequently, however, in the application for amendment, it was sought to be modified that it was not an agreement for sale.

(4) My attention was also drawn to a Division Bench decision of this Court in *Sh. Mahinder Singh v. Smt. Iqbal Kaur & Others*, reported in 1995 Iii Ad (Delhi) 760. In

the said case, the Division Bench considered the ratio of Panchdeo Narain Srivastava and a few others Supreme Court decisions and held that the admission sought to be withdrawn and inconsistent plea sought to be introduced could not be attributed to any inadvertent error or admission. In the said case, it was found by the Division Bench of this Court that on the contrary, the averments made in the application for amendment did not inspire any confidence and could not be said to have been made bona fide. On going through the facts of that case, the Division Bench found that the basis and justification for the amendment application was not credible and did not inspire any confidence and accordingly the application was rejected.

(5) Reference was also made to a decision of this Court in *R. Gupta @ Raj Gupta v. Nirmal Nanda & Another*, reported in 1988 (2) Current Civil Cases 268. In the said case, there was an admission in the written statement. In that case, the tenant sought for the amendment of the written statement in order to take a new plea that he alone was not the tenant in the premises but a partnership-firm was the tenant. Rejecting the application, this Court held that the appellant had not only made a vital admission in the written statement that he alone took the premises on rent, but he also gave sworn testimony before the Controller that he alone had been the tenant in the premises in question. The Court considered that it was impossible to believe that in case tenancy had been created in the name of partnership initially the appellant would have forgotten this material fact while drafting the written statement and giving a statement in Court.

(6) There is no dispute with the settled principles of law in respect of amendment of the pleadings. It cannot be disputed that even an admission in the pleadings could also be explained away.

(7) In the facts and circumstances of the present case, however, I find that the petitioner earlier entered into agreements with Zavody Vseobecneho Strojirenstvi (hereinafter referred to as ZVS) in the year 1982 and thereafter again 1986 in the form of two agreements and thereafter again in 1992. The date of coming into force of each of the said agreements has also been defined in the said agreements itself. Being aware of the effective date of the agreements, the

petitioner made a statement that the agreements stood expired in July, 1994. Subsequently, the petitioner filed an arbitration petition registered as Aa 82 / 96 and when the respondent in the said case pointed out and relied upon the statement made by the petitioner in the present case that according to him also the said two agreements stood expired in the month of July, 1994, the plaintiff/petitioner has come up with the present application. The intention of the plaintiff thereforee appears not to be bona fide and the same appears to be in order to wriggle out of the difficult position that it has put to itself by making the aforesaid statement in the plaint.

(8) It is stated by the defendant/respondent that acting on the basis of the statement made in paragraph 13 of the petition that its agreement with Adamovske had expired in July, 1994, Amit International & Adamovske have altered their position considerably by entering into long term commercial arrangements for sale of machines manufactured by Adamovske in India and pursuant thereto have taken concrete steps, made investments, participated in international exhibitions and sold over 26 machines and have spent more than Rs.50.00 lakhs in promoting the business of selling machines specified in reply to the aforesaid application. Under such circumstances, the defendant/respondent having altered its position, it would not be appropriate at this stage to allow the amendment as sought for by the plaintiff/applicant, since in my opinion, in any case, the date of expiry of the agreements would be dependent on the interpretation of the clauses of the agreement and, thereforee, no prejudice would be caused to the plaintiff/ petitioner even if the amendment sought for is not allowed. I have, by a separate order passed today in Aa 82/94 held that even apart from the aforesaid admission, the said two agreements entered in the year 1986 have have expired by efflux of time in the month of May, 1995.

(9) In view of the aforesaid, I do not see any reason why the said amendment as sought for should be allowed. The parties have altered their positions and thereforee if the present amendment is allowed, the respondents would be prejudiced. Accordingly, I find no merit in this application and the same is rejected. Application rejected.

