

Marble Art Vs. China Shipping Container Co. Ltd. and anr.

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Court : Delhi

Decided On : Mar-13-2009

Reported in : 161(2009)DLT229

Judge : Manmohan Singh, J.

Acts : Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : IA No. 8440/2003 in CS (OS) No. 690/2003

Appellant : Marble Art

Respondent : China Shipping Container Co. Ltd. and anr.

Advocate for Def. : P.C. Sen, Adv. for Defendants Nos. 1-2

Advocate for Pet/Ap. : S.K. Makkar, Adv

Disposition : Application dismissed

Judgement :

Manmohan Singh, J.

1. The Plaintiff had filed the above mentioned suit for declaration and mandatory injunction and the same is pending before this Court.

2. By way of present application being IA No. 8440/2003 filed under Order 6 Rule 17 CPC, the plaintiff is seeking to amend its claim in the main suit and include the prayer for damages also. The Plaintiff claims that it has suffered damages to the tune of Rs. 27,07,618/- on account of non-delivery of goods to it by the Defendants. Due to the said non-delivery, the Plaintiff avers that it has been unable to execute orders received by its customers, which has resulted in the above stated losses.

3. The Plaintiff submits that the Defendant No. 1 has no lien on the said goods and that its refusal to delivery the same amounts to unlawful withholding of consignment.

4. The Plaintiff avers that para 19 of the Plaint relating to valuation may also be allowed to be amended and confines the relief of damages to Rs. 20,00,000/- on which the requisite court fee of Rs. 21,864/- has been affixed.

5. The Plaintiff submits that the application for amendment should be allowed for effective determination of the dispute and in the interest of justice.

6. The Defendants oppose the application on the ground that the plaintiff by the current application is seeking to amend the very nature of the suit, as it was originally a suit for declaration and mandatory injunction and the Plaintiff is now trying to amend it so as to make it a suit for damages also. The Defendants allege that the amendment sought by the Plaintiff would be a material alteration and it will change the nature of the cause of action, hence the application is not maintainable and deserves to be dismissed.

7. The Defendants further submit that since at the time of institution of the suit, although the Plaintiff had full knowledge of the alleged losses suffered by him but he failed to make any prayer regarding the same, therefore, he is now stopped from doing so.

8. The Defendants aver that the non-receipt of cargo is not the subject matter for the suit and that the alleged damages suffered by the Plaintiff are due to his own fault in not taking delivery of the goods despite this Court's order directing it to do

the same. As per the Defendants, by order dated 01.05.2003 the Division Bench directed the Plaintiff to obtain delivery of the goods by making a payment of 50% of the demand raised after a 40% waiver, and to furnish a Bank Guarantee for the remaining 50%. The Defendants submit that the Plaintiff has till date not complied with the said order.

9. I have heard learned Counsel for the parties.

10. In my view, a simple test which needs to be applied in order to ascertain whether in the given case the amendment ought to be allowed is that it should satisfy the two conditions i.e. that the amendment would not cause injustice to the other side and secondly the amendment is necessary for the purpose of determining the real question in controversy between the parties.

11. It appears from the pleadings that originally the suit for declaration and mandatory injunction was filed by the plaintiff wherein a decree for declaration was sought that the rates being charged by the defendants towards container detention charges are arbitrary, unconscionable, null and void and the defendant No. 2 has no right to withhold the consignment against the non payment of container detention charges.

12. It is not in dispute that by order dated 1st May, 2003 a Division Bench of this court directed the plaintiff to obtain delivery of the goods by making payment of 50% of the demand raised after the 40% waiver and to furnish the bank guarantee for remaining 50%. Learned Counsel for the plaintiff has admitted that the said order has not been complied with, now by way of this application, the plaintiff is seeking amendment and wishes to introduce more allegations against the defendants and also seeking amendment for the relief of damages by confining his claim to Rs. 20 lakhs.

13. Learned Counsel for the defendants has argued that the detention charges leveled by them are not arbitrary as the plaintiff had at earlier point of time through his sister concern has paid the detention charges on the same applicable rates where some grace period was also availed. It has also been argued by the defendants that the plaintiff has not suffered any loss and damage on account of

demand of detention charges on the applicable rates. The amendment sought by the plaintiff is an after thought and it will introduce fresh cause of action, therefore, the amendment should not be allowed.

14. This court is aware that the law of amendment is very liberal and all amendments ought to be allowed, which satisfy the conditions mentioned above. In my view, the plaintiff in this suit which was filed seeking declaration and injunction cannot be permitted to amend the plaint by incorporating the prayer for damages as it will introduce an entirely different cause of action in the present circumstances. Also, since at the time of institution of the suit, the plaintiff had full knowledge of the alleged losses suffered by him, he cannot now seek to amend the plaint. Further, *prima facie*, it is doubtful whether the suit for alleged damages is maintainable where plaintiff has admittedly not taken the delivery of the goods at the first instance and secondly when the court has directed the plaintiff to obtain the delivery of the goods on certain conditions, the said order has also not been complied by the plaintiff.

15. Further, the purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. The power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various Courts. It is true that the amendment cannot be claimed as a matter of right and it is also equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule in cases where the other side can be compensated with the costs.

16. It appears from the facts and circumstances of the present case that since the plaintiff has not complied with the orders of the court and the plaintiff is aware that it is not possible for the plaintiff to get the delivery of the goods due to the reasons that the detention charges were very hefty and even more than the actual price of the goods, therefore, the intention of the plaintiff is now to claim the damages for non delivery of the goods by the defendants.

17. In the present case there is nothing available on record to indicate that the plaintiff had no knowledge of the facts which are now sought to be added by the

plaintiff by making the present application. The amendment sought is, prima facie, distinct and independent of the original relief asked for. Therefore, it cannot be allowed as this court feels that under the garb of this amendment, the plaintiff wants to introduce a new cause of action and attempts to change the nature of the suit which is unconnected with the original cause of action on which the suit was instituted. If the amendment sought for is allowed that would also take valuable right of the other side and the same would give rise to a new plea which cannot be permitted. The proposed amendment sought by the plaintiff cannot be permitted. I.A. No. 8440/2003 stands dismissed. No costs.

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