IN THE COURT OF SH. SACHIN SOOD
DISTRICT JUDGE-01 (CENTRAL):
TIS HAZARI COURTS: DELHI

CS NO. 1338/2023
CNR NO. DLCT01-017500-2023

Shilpi Modes through its proprietor:
1. Dr. Arving Aggarwal
Add: M4/17A, DLF Phase-2
Gurugram- 122002

2. Dr. Meena Aggarwal
Add: M4/17A, DLF Phase-2
Gurugram- 122002. **….PLAINTIFFS**

V E R S U S

Central Bank of India
Head Office Bombay &
Branch Office Panchsheel Park,
New Delhi – 110017. **….DEFENDANT**

ORDER

1. The present suit initially was filed before the Hon'ble High Court of Delhi seeking the relief of permanent and mandatory injunction together with a money decree for an amount of Rs. 5,05,000/- together with interest from the date of the suit till the date of the payment. The said plaint has been filed in the year 1995. The cause of action for filing the plaint is that the plaintiff was carrying on the business of export of readymade garments and had obtained credit facilities from the defendant bank. As per the plaintiff, since the credit limit of Rs. 1 crore was made available only partially, the plaintiff suffered losses to the tune of Rs. 2,43,000/-due to the illegal action of the bank. In the plaint as filed the plaintiff also filed an application under Order II Rule 2 CPC to raise further claims against the defendant bank. As per the plaint, the plaintiff has not claimed the losses towards the delayed shipments to Budapest, losses caused to the plaintiff due to non-cooperation of the bank leading to virtual closure of the unit of the plaintiff firm, losses on account of mental torture and false criminal prosecution and charging of interest contrary to the RBI Directives and has mentioned that the same would be claimed separately and had laid its claims only towards the claim against Bangladesh transaction, delayed shipments to Budapest and losses caused to the plaintiff against unexecuted pending export orders and had restricted its claim to Rs. 5,05,000/- and reserved its rights to claim the balance amount by way of a separate suit.

2. The defendant had filed written statement and also had filed its reply to the application under Order II Rule 2 and also of the application under Order XXXIX Rule 1 & 2 CPC. It is worth mentioning that thereafter, vide order dated 25.01.2001, the suit was adjourned *sine die,* since no effective hearing had taken place in the suit w.e.f the year 1996 till the year 2001.

3. Thereafter, an application i.e. civil miscellaneous petition was filed by the plaintiff on 06.01.2023, seeking re-opening the suit towards the complete dispensation of justice. Vide order dated 09.12.2023, on the statement made by the Ld. Counsel for the defendant, the present suit was restored to its original number. Thereafter, the plaintiff has filed the present application seeking amendment of the plaint. **Vide the present application, the plaintiff has sought to give up prayer (i) and (ii)**

and instead had sought recovery the consequential losses suffered by the plaintiff upto 31.03.2023 by claiming recovery of an amount of Rs. 16,63,23,06,963.00 (Rupees One Thousand Six Hundred Sixty Three Crores Twenty Three Lakhs Six Thousand Nine Hundred Sixty Three) stating that in the light of subsequent development and unlawful actions of the defendant, the plaintiff be permitted to amend the plaint.

4. In the present application, it has been contended that since the institution of original suit in the year 1995, several new facts constituting illegal acts done by the defendant bank have arisen including institution of various frivolous cases against the plaintiff which are required to be incorporated for the proper adjudication of the suit. It has further been contended that the defendant bank during the business transaction of the plaintiff are responsible for misappropriation, embezzlement of funds, filing of false criminal complaints to E.D, false FERA cases, false counterblast suits, securing fraudulent ex parte orders and obtaining false ex parte recovery certificate from the Debt Recovery Tribunal, Lucknow which too are required to be incorporated.

5. No reply to the present application has been filed by the defendant, who instead has addressed oral arguments.

6. Ld. Senior Counsel appearing on behalf of plaintiff has argued that the Court has wide powers to permit the amendment in the plaint. It has further been contended that since issues in the present suit have not been framed, hence, it cannot be said that the trial has commenced. It has further been argued that the amendments are necessary for the purposes of determining the real questions in controversy between the parties. Ld. Senior Counsel has also argued that no prejudice would be caused to the defendant since substantial proceedings have not taken place and the said amendments are towards the step in advancement of justice. It is thus submitted that since the provisions of Order VI Rule 17 CPC permits the amendment of plaint at any stage of the suit and since the approach of the Court is liberal in permitting amendment where the trial has yet not commenced, the present application be allowed.

7. *Per contra*, it has been argued by the Ld. Counsel for the defendant that the amendment being sought are hit by the period of limitation and the plaintiff cannot be permitted to keep the sword of Damocles hanging over the head of the defendant and that too in a cause of action in respect of which the plaintiff has filed the present plaint in the year 1995. It has further been argued that in the original plaint the plaintiff has restricted his claims towards damages at Rs. 5,05,000/-, who cannot be permitted to enhance the same by taking advantage of the suit having been adjourned *sine die*. Ld. Counsel for defendant has placed reliance upon the judgment passed in the matter of **M/s Reevajeetu Builders & Developers v. M/s Narayanaswamy & Sons & Ors.**, *AIR 2009 SC (SUPP) 2897*, **North Eastern Railway Administration, Gorakhpur v. Bhagwan Dass**, *(2008) 8 SCC 511*, **State of Madhya Pradesh v. Union of India** *AIR 2012 SC 2518*, **Raj Kumar Guravara v. M/s S.K Sarwagi & Company Pvt. Ltd.** *(AIR 2008 SC 2303)* and **Narendra Pandey v. Jagtar Singh & Ors.** *2024 DHC 51.*

8. I have heard the arguments and perused the record.

9. Before proceeding to deal with the rival contentions on either side, it is deemed appropriate to reproduce Order VI Rule 17 as follows:

17 Amendment of pleadings - The Court may at any stage of the

proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Thus, from the aforesaid Section, it is clear that (a) amendment of the pleadings can be allowed at any stage (b) amendment must be necessary to determine the real question of controversy between the parties (c) if such amendment is sought to be brought after commencement of trial, the Court must in allowing the same come to a conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. In the present matter the trial is yet to commence and the matter is only at the stage of completion of pleadings.

The general principle in respect of amendment of the pleadings is that the court at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments may be allowed which are imperative for determining the real questions in controversy.

10. In **Suraj Prakash Bhasin v. Raj Rani Bhasin & Others (AIR 1981 SC 485)**, Hon'ble Apex Court held that liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretense of amendment, that one distinct cause of action should not be substituted for anther and that the subject- matter of the suit should not be changed by amendment. Some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are :

(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;

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17 and are only illustrative and not exhaustive in nature.

11. The amendments cannot be claimed as a matter of right and under all circumstances, but it is equally true that while deciding such prayer, Court should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. The purpose and object of Order VI Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings, in the interests of justice, on the basis of guidelines laid down by various Hon'ble High Courts and Hon'ble Supreme Court.

12. Dealing with the questions as to whether the provisions of Order II Rule 2 CPC can be made applicable to an amendment application and also whether the amendment of the plaint for the purposes of enhancing the amount towards damages could be said to be hit by the doctrine of constructive resjudicata, the Hon'ble Apex Court in the matter of **Life Insurance Corporation Ltd. v. Sanjeev Builders Pvt. Ltd. & Anrs**. *civil Appeal No. 5909 of 2022* has reiterated the above quoted principles and has further held that it is well settled principles that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It has further been observed, it is always open to the Court to allow an amendment, if it is of the view that allowing of the amendment shall really subserve the ultimate cause of justice and avoid further litigation. The Hon'ble Apex Court quoted with approval the law laid down in the matter of **L.J Leach & Co. Ltd. & Anrs. v. Jardine Skinner & Co.** and **T.N Alloy Foundary Company Ltd. v. T.N Electricity Board & Ors.**, including the law laid down in the cases of **Ganga Bai v. Vijay Kumar** *1974 (2 SCC) 393*. The Court further quoted with approval the law laid down in the matter of **Pankaja & Anrs. V. Yellapa dead by LRs. & Ors**. *2004 (6 SCC) 415 w*hereby it has been held that if granted an amendment really subserves the ultimate cause of justice and avoid further litigation, the same should be allowed. The Apex Court in the said matter has also placed reliance upon the observations laid down in the matter of **Ragu Thilak D John v. S. Rayappan & Ors**. *2001 (2 SCC) 472* and **Vineet Kumar v. Mangal Sen Wadhera** *1984 (3 SCC) 352*, to hold that the question whether the amendment was barred by time or not was a disputed question of fact and therefore the prayer for amendment could not be rejected and the issue of limitation can be made an issue in the suit itself. In the said matter the Hon'ble Apex Court in facts akin to the facts of the present case, where the value of the suit amount is sought to be increased made after expiry of a period of about 30 years, noting the fact that the trial is yet to commence, kept open rights and contentions of the defendant to raise the issue of limitation to be decided during the course of the trial, permitted the amendment. The Hon'ble Apex Court also authoritatively held that Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls beyond its purview. Thus, applying the ratio of the judgment passed in the matter of **Life Insurance Corporation Ltd. v. Sanjeev Builders Pvt. Ltd. & Anrs**. *Civil Appeal No. 5909 of 2022,* **since the bar of Order II Rule 2 CPC, is not applicable simply on the ground that the plaintiff has sought the enhancement of the amount claimed in the suit and also keeping in view the fact that vide the present amendment effective and proper adjudication of the controversy between the parties is being sought and is also a step towards preventing multiplicity of proceedings, the present application is allowed subject to a cost of Rs. 10,000/-, to be paid to the defendant and also subject to all just exceptions, leaving the question of limitation open to be determined during the course of the trial.**

(Pronounced in the Open Court on 13.04.2026)

SACHIN SOOD

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(SACHIN SOOD)
District Judge-01 (Central)
Tis Hazari Courts : Delhi