

C. S. No. 1008/16

11.04.2018

Present: Proxy counsel for plaintiff.

Sh. Vineet Srivastava, proxy counsel for defendant No.1, 2 and 3.

Sh. N. S. Ydav, counsel for defendant No. 5.,

Defendant No. 4 is already ex-parte but in view of filing of the amended plaint, notice was issued to defendant No. 4 afresh and defendant No. 4 is served on 28.03.2018 by the process server and in token of receipt of the notice, stamp of defendant No. 4 with date was affixed on the report of the process server. In view of non appearance of anyone on behalf of defendant No. 4, defendant No. 4 continues to remain ex-parte.

Written statement to the amended plaint is filed on behalf of defendant No. 1, 2 and 3 with annexure A.

Counsel for defendant No. 5 submits that the application under order 6 rule 17 CPC is yet to be allowed and is filing reply to the said application.

This is suit for recovery of Rs. 4 Lac filed by the plaintiff bank who is banker of defendant No. 1, 2 and 3. The cheque of Rs. 4 Lac was issued by defendant No. 1, 2 and 3 in favour of defendant No. 4 which was deposited by defendant No. 4 in his account with defendant No. 5/ Corporation bank. The said cheque was cleared on 06.02.2010 though there was insufficient balance in the account of defendant No. 1.

The plaintiff bank immediately asked the defendant No. 5/ Corporation bank to stop payment/reverse the amount of cheque. The defendant No. 5 asked the plaintiff bank to give some time to look into the

matter but did not reverse the said amount, hence the suit was filed claiming Rs. 4 Lac from defendant No. 1 & 2.

Written statement filed by defendant No. 3 who is said to be the authorized signatory of defendant No. 1 firm states that there was stop payment of the cheque and this fact is admitted by the plaintiff bank in its letter dated 15.03.2011 written to defendant No. 5/ Corporation bank.

In the application under order 6 rule 17 CPC, plaintiff is seeking incorporation of date of 15.10.2011 as incomplete date was mentioned. The other changes in para No.11 & 12 are also grammatical minor changes. Incorporation of new para as para No. 15A is being sought to the fact that defendant No. 1 after issuance of the cheque to defendant No. 2 instructed the plaintiff bank to stop payment of the said cheque but due to system failure the amount was credited in the account of defendant No. 4 and as defendant No.4 has received the said amount without any right or authority, after stopping of the payment of the said cheque, defendant No. 4 is alternatively liable to pay the amount of Rs. 4 Lac to the plaintiff bank.

Further incorporation of new para 16-A as to refund to the aforesaid amount by defendant No. 1 & 2 or defendant No. 4 is sought. The rest of changes are consequential, formal and grammatical changes.

In view of non appearance on behalf of defendant No. 4 despite notice, defendant No. 4 continues to remain ex-parte.

In the reply filed by defendant No. 5, the contention of delay mainly has been raised as even issues were framed in this case on 04.10.2016 and case was at the stage of P. E. Nothing further has been mentioned therein.

In view of the averments made in the application and in the background of the case set up by the plaintiff where admittedly cheque was encashed in the account of defendant No. 4, I deem it appropriate to allow the

application. The application under order 6 rule 17 CPC stands allowed accordingly. Amended plaint is taken on record.

Written statement to the amended plaint is filed on behalf of defendant No. 1, 2 and 3. Copy supplied.

To come up for filing of written statement to the amended plaint by defendant No. 5 also.

Put up on 01.06.2018.

(Vipin Kumar Rai)

Additional District Judge-03
East District/KKD Courts/Delhi
11.04.2018

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