

CS280/19
PARVEEN KUMAR GAUR
Vs. SANJEEV KUMAR @ SANJEEV KUMAR MALIK

08.07.2024

Present: Ld. counsel for plaintiff.
Ld. counsel for defendant no. 1.
Respective counsels for proposed defendant no. 2 and
defendant no.3.

1. In this matter, initially defendant no. 2 and defendant no. 3 were arrayed as proforma parties by the plaintiff and they were deleted from the array of parties vide order dated 24.09.2019. Subsequently, an application for impleadment (as parties/defendants under Order I Rule 10 CPC) was moved along with another application VI Rule 17 CPC on 19.01.2022.

2. In order dated 17.11.2022, initially it was submitted on behalf of plaintiff that plaintiff is not pressing the application under Order VI Rule 17 CPC at that stage and the decision of the said application shall be subject to the outcome of the application under Order I Rule 10 CPC. Thereafter, it appears that all the parties were allowed to file replies to both the applications and thus, parties addressed arguments on the aforesaid two applications today.

3. I propose to take up the first application i.e. filed under Order VI Rule 17 CPC by the plaintiff. Considering the nature of amendments sought in the plaint, if the said application succeeds in toto, proposed defendant no. 2 and defendant no. 3, shall, by virtue of amendments to be allowed, if at all, become parties to the suit and therefore, there would be no need to separately make them parties to

the suit. Meaning thereby that the second application seeking their impleadment in the suit shall then become infructuous.

4. Thus, I proceed to decide the application under Order VI Rule 17 CPC moved on behalf of plaintiff. Plaintiff wants to amend different paras of his suit as stated in the application and also correct certain typographical errors described in the application.

5. In this regard, reference can be had to para 4 to 8 of the application as per which plaintiff wants to amend para 2, 18, 33, 34 and the prayer clause.

6. The suit is at the initial stage and issues have not been framed. As per the original plaint, initially the present defendant Sanjeev Kumar had acted as property dealer for the plaintiff and while acting as an agent of defendant no. 2 and defendant no. 3 (who are not parties to this suit as of now), he received some money in his own account and some money was paid to defendant no. 3. An agreement to sell was also entered between the plaintiff and defendant no. 2. As per agreement filed by the plaintiff in the main suit, defendant no. 2 received Rs.30 lacs from the plaintiff but the property in question was never sold.

7. As per the plaintiff's case, he has paid a total sum of Rs.35 lacs to the said defendants (of which Rs.30 lacs is reflected in agreement between him and defendant no. 2). As per him, money was paid through banking channels amounting to Rs.7 lacs to defendant no. 3 and some money was admittedly paid in the account of defendant no. 1.

8. It is the contention of the plaintiff that considering the aforesaid facts, defendant no. 2 and defendant no. 3 were always necessary party in this suit and the previous counsel for plaintiff had wrongly stated in para 33 of the unamended plaint that defendant no. 2 and defendant no. 3 are proforma parties and main relief of the plaintiff [as per prayer clause (i)] is limited to defendant no. 1. It is the contention of the plaintiff that if the whole transaction is seen in the right perspective, the initial plaint was rightly filed against all defendants. He claims that the aforesaid amendments are in line with the case of the plaintiff and only few typographical errors and the fact that defendant No. 2 and 3 received money or are business partners is required to be brought on record.

9. He prays that considering the stage of the suit and the fact that the aforesaid facts were disclosed in the main plaint, necessary amendments in relief paras of the plaint should be allowed so that the entire dispute between the parties can be adjudicated.

10. The application is opposed by defendant no. 1 and proposed defendants who argued that once the plaintiff himself claimed that no relief is sought against defendant no. 2 and defendant no. 3 and they are only the proforma defendants, no amendment should be allowed. As per them, once plaintiff claims that D-2 and D-3 are proforma defendants, he cannot be allowed to go back on his said admission. They pray for the dismissal of the said applications.

11. I am not inclined to accept the said argument raised on behalf of D-1 and proposed defendants. The plaint has to be read holistically and the issues in this matter are yet to be framed. It is

settled law that while deciding an application for amendment, a pedantic approach should not be taken. Plaintiff has specifically claimed in the unamended suit that he met defendant no. 1 as property broker and defendant no. 1 received some money in his account on behalf of defendant no. 2 and defendant no. 3. As per original plaint (which has certain typographical error qua defendant in para 18) some money was paid by plaintiff to defendant no. 3 also. Plaintiff also entered into an agreement to sell with defendant no. 2. Thus, in the original plaint itself, some roots of cause of action qua all the defendants can be found. Only because plaintiff has stated in para 33 of the plaint that D-2 and D-3 are proforma parties and no relief is sought against them shall not mean that the plaintiff cannot amend his plaint after he was so advised by his new Counsel. It is the duty of the Court to decide the substantial *lis* brought before a Court and when the matter is still at the stage of completion of pleadings, no prejudice shall be caused to any of the parties in case amendment is allowed. Evidently, there are few typographical errors in the plaint (especially with respect to payment made by plaintiff to different defendants as per para 18 of unamended plaint). Now, once, the plaintiff claims that these are typographical errors, I see no reason to not allow the plaintiff to correct the same.

12. Again, if I take holistic view of the plaint already on record, it appears that as per the plaintiff's case, he entered into some written agreement with defendant no. 2 and defendant no. 2, as per the said agreement, received Rs.30 lacs from plaintiff. Since as per plaintiff, the deal did not go through, defendant no. 2 would be a necessary party in this suit. Again, as per the plaintiff, defendant no. 2 and 3 are business partners and defendant no. 3 also received some

money from plaintiff. This again makes out case for trial qua defendant no. 3 making him necessary party.

13. Thus, in my view, application seeking amendment in this case is liable to be allowed. It is held that defendant no. 2 and 3 are the necessary parties for adjudication of this suit. Accordingly, application for amendment is allowed and proposed defendant no. 2 and 3 are impleaded as defendant no. 2 and 3 in the present suit. Plaintiff is directed to file amended plaint along with amended memo of parties within 4 weeks from today with advance copy to the other side.

14. Since defendant no. 2 and 3 are already appearing, no separate notice is required to be served upon them. Written statements be filed by all the defendants within four weeks from the date of filing of amended plaint with advance copy to opposite party.

15. In view of the above, application under Order I Rule 10 CPC is also disposed of in terms stated above.

List for further proceedings on 21.08.2024.

Aashish Gupta
DJ-01/NE/KKD/DELHI
08.07.2024