

18.10.2022

Present: Sh.Dinkar Singh, Sh.Gagan Garg and Sh.Rohit Singh Adv. Ld.
Counsel for plaintiff.

Sh.Ashish Aggarwal, Ms.Aastha Kaushal and Ms.Kanika
Goyal Adv. Ld. Counsel for defendant.

Arguments heard on application u/s 151 CPC moved by the
defendant to strike off para 20 and para 20 (i) of the affidavit of evidence
PW Sh.Mukesh Malhotra.

This is a suit for recovery of Rs.84,70,484/- filed by the
plaintiff. In para 15 of the plaint, the plaintiff has given the break up of the
suit amount, inter alia, claiming Rs.30,94,000/- on account of legally
recoverable arrears of rent.

While giving break up of the total claim amount of
Rs.84,70,484/-, the plaintiff witness, in his evidentiary affidavit, in para 22
(a) (i) has claimed Rs.10,89,386/- towards the reimbursement of the service
tax paid from its applicability till 30.04.2009.

Ld. Counsel for defendant has argued that there is no such
specific mention of this claim of Rs.10,89,386/- anywhere in the plaint and
the disputes its incorporation in the affidavit of evidence.

On the other hand, application is strongly opposed by Ld.
Counsel for plaintiff submitting that vide order dated 22.02.2021, the
plaintiff was permitted to file certain challans and the total amount of those

challans is Rs.10,89,386/-. He submits that order dated 22.02.2021 has attained finality as the defendant unsuccessfully challenged the same before Hon'ble High Court.

Ld. Counsel for plaintiff submits that so far as the total claim of the plaintiff is concerned that is given in the plaint. He submits that in para 20, the plaintiff has given the detailed break up of the various amounts, claimed and once the plaintiff has been permitted to place those documents on record vide order dated 22.02.2021, the plaintiff was well within its right to bring those documents on record by explaining the sum total of the said amount in his affidavit by way of clause 20(i) and para 22(a)(i).

Admittedly, the amount claimed in the suit is correct as per the plaint. The documents i.e. challans admittedly have been permitted to be taken on record vide order dated 22.02.2021. In para 20(i), the plaintiff has given break up of the said challans and has taken total amount of Rs.10,89,386/- on account of the service tax paid by the plaintiff and claimed its recovery.

It being so, it cannot be said that the incorporation of the amount of Rs.10,89,386/- in para 22(a)(i) is beyond pleadings. Therefore, I find no merit in the application. Same is accordingly dismissed. Defendant shall always be at liberty to cross examine the witness on these aspects.

CS DJ 9722/16

MS OMSA INFRASTRUCTURE SERVICES P LTD Vs. MS GRANDSLAM AND OTHERS

Heard on the application moved by the plaintiff for waiver of the costs. Ld. Counsel submits that the witness was not called on the last date as application u /s 151 CPC moved by the defendant are to be taken up.

File reflects that matter was fixed for PE, but no PW was present, therefore, no case is made out for waiver of costs. Application is dismissed. Costs be paid on the next date.

Put up for PE on **21.02.2023**.

(Munish Markan)
ADJ-02(SE)/District Courts, Saket,
New Delhi/18.10.2022

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