

16.11.2022

Present: Sh.Vishwendra Verma Adv. Ld. Counsel for
plaintiff present through VC.

Sh.Vaibhav Gupta Adv. (*M. No.9599043045*),

email: legal@sigmalegal.in and Ms.Vandana

Kothari Advs. Ld. Counsel for defendant.

Heard on the application under Order 7 Rule 11
CPC.

This is a suit for recovery of Rs.41,30,098/-. Ld. Counsel for defendant submits that the Bills in question relied upon by the plaintiff pertain to period 04.01.2012 upto 22.02.2012 and as per the plaint, last payment was made on 17.07.2012. He submits that the present suit having been filed on 23.05.2016 is barred by limitation.

On the other hand, Ld. Counsel for plaintiff submits that the suit was initially filed before Hon'ble High Court on 15.02.2014 but the same was returned on 20.05.2016 with the noting of the Registry to file the same in proper court having pecuniary jurisdiction. Seen the said noting of the Registry. Even in the plaint, on the backside of the memo of parties, there is seal of the Deputy Registrar with filing No.2842 dated 15.02.2014. Therefore, by excluding the period during which the matter was lying before the Hon'ble High Court, the plaint, prima facie, is within limitation.

Further, Ld. Counsel for defendant submits that plaintiff has filed the court fees of Rs.40,000/- only whereas the court fees payable is Rs.42702/-. After making re-calculation, Ld. Counsel for plaintiff submits that he shall file the deficient court fees. Plaintiff is directed to file the court fees within two weeks with notice to the opposing counsel. The application under Order 7 Rule 11 CPC is disposed off.

Further, Ld. Counsel for plaintiff submits that in another suit bearing CSDJ No.75/19 which has been filed by Sh.Rajesh Kumar Gupta who is proprietor of the present defendant, in the said suit vide order dated 07.12.2018, it was directed that the said suit shall be treated as Counter Claim to the present suit. It be treated as such and therefore, both the suits shall be taken up together.

Both the counsels agree that common question of facts are involved and common evidence to be led in both the cases. Therefore, from the pleadings in the main suit, of the parties, following issues are framed:

ISSUES:

- 1. Whethre plaintiff is entitled to decree for a sum of Rs.41,30,098/- as prayed? OPP**
- 2. Whether plaintiff is entitled to any interest, if yes, at what rate and for what period? OPP**
- 3. Whether suit is not maintainable in its present form? OPD**

4. **Whether defendant no.3 is an unnecessary party? OPD**
5. **Relief.**

From the pleadings in the Counter Claim CSDJ No.75/19, following issues are framed:

ISSUES:

1. **Whether the Counter Claimant is entitled to decree for a sum of Rs.1,04,96,394.37 as prayed? OPCC**
2. **Whether the Counter Claimant is entitled to any interest, if yes, at what rate and for what period? OPCC**
3. **Whether the Counter claim is not maintainable in its present form? OPD**
4. **Relief.**

No other issues arises or is pressed for.

List of witnesses be filed by both the parties within two weeks with copies exchanged.

Both the counsels agreed that a Local Commissioner may be appointed for recording of evidence of both the parties at their respective expenses. Eventually, it shall be the costs of the litigation at the end of the case.

The present plaintiff in CSDJ No.10576/16 shall lead the evidence first. Plaintiff shall supply copy of the affidavit of his witnesses to the opposing counsel within two weeks.

In view of the same, **Ms. Rita Vashist Advocate, Enrollment no.D-1519/2003, office at Chamber no.674,**

Patiala House Court, New Delhi - 110001, Mobile no.9311278518 is appointed as Local Commissioner for recording of evidence of witnesses of both the parties at their respective expenses..

Remuneration for recording of evidence is fixed at Rs.5,000/-per sitting of two hours. All the secretarial expenses shall be borne by the respective parties In case the evidence is recorded in the Court, the Ahlmad of the court shall provide the court record to enable the examination of the witnesses and cost of Rs.500/- per sitting shall be paid to the Ahlmad. Ahlmad shall ensure the safe custody of the court record during the proceedings. In case the LC record the evidence in his office/ out of Court, parties may get the certified copy of the documents if required, for the purposes of using the same during evidence.

All payments shall be redeemable as cost of litigation at the end of the suit.

Once the evidence commences, Ld. Local Commissioner is directed to make endeavour to record the evidence on day to day basis and in any case, not to give date of more than 10 *working days* between the two dates. Local Commissioner is also directed to not adjourn the matter telephonically at the mere asking of the counsels. Local Commissioner shall provide the copy of evidence and proceedings for each date to both the parties through email/soft copy.

In case, any adjournment is sought by any party on

any given date, the cost of proceedings of that date shall be borne by the defaulting party.

The Court Commissioner is directed to complete entire evidence by next date.

Parties to appear before LC for recording of evidence on **23.12.2022**.

Put up for final arguments on **20.03.2023**. Copy dasti.

(Munish Markan)
ADJ-02/SE/ District Courts Saket,
New Delhi/16.11.2022

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