

CS 87/17
UNICORN DENMART LTD. Vs. AMIT SINGH

22.12.2023

At 12:37pm

Present: Sh. Divyam Rathi, Ld. proxy counsel for Sh. Gunjan Kumar, Ld. Counsel for the plaintiff through VC.
Sh. Devesh Tuli, Ld. Counsel for the defendant through VC.

1. Matter is listed for orders on the application under order VI Rule 17 CPC filed by the defendant seeking amendment of WS.

2. Arguments already heard on 27.10.2023.

3. By way of the present application under Order VI Rule 17 CPC the defendant wants to add paragraph before para no.1 of the WS and amended/add in para no.1 of the WS, para no.2 of the WS, para no.3 of the WS, para no.4 of the WS, para no.5 of the WS, para no.6 of the WS, paras no.7 and 8 of the WS, para no.9 of the WS and additional facts in the WS.

4. Ld. counsel for the defendant argued that the proposed amendments are procedural in nature and shall not amount to withdraw any of his admission made earlier in the WS. It is further argued that the proposed amendments are only explaining the earlier stand of the defendant taken in the WS in the present matter and also adding some additional facts which are necessary

(2)

for just and proper decision of the present suit and determination of the real question in controversy between the parties.

5. The Ld. counsel for the plaintiff submits that by way of proposed amendment defendant wants to withdraw the admission paras no.3 to 8 made in the WS. It is also argued that defendant wants to completely change the nature of defence and by way of proposed amendment sought, the defendant wants to file new WS taking new pleas.

6. The case of the plaintiff is that plaintiff is a public limited company and is the leading importer, manufacture dental products providing complete dental solutions with the latest technology. It is also stated in the plaint that defendant is ex-employee of the plaintiff and defendant was offered appointment as a General Manager (Marketing) in the plaintiff company vide letter dated 01.08.2011 which was duly accepted and signed by the defendant.

7. It is also stated in the plaint that the defendant had joined the plaintiff company on 01.08.2011 and worked there till 30.12.2015 and at the time of leaving the plaintiff company, the defendant was heading the marketing division of plaintiff company. It is also stated in the plaint that as a head of marketing division, the defendant was prevely to all important policy decisions of the plaintiff company to future growth plan. The

(3)

position occupied by the defendant was a sensitive position and any breach would be detrimental to the plaintiff company.

8. It is also mentioned in the plaint that in the present commercial scenario, confidentiality of informations of a company are always at risk and to stop such menace, companies out certain reasonable restrictions on their employees, including restriction of not working with companies, who are directly in competition with or who are clients of such company or who are in any way closely associated with the operation of such company for a specified period of time, immediately after leaving such company. Such conditions imposed by the company to ensure that their confidentiality is not compromised in any manner and shifting to such employee to any such competition company/client etc. adversary affect of the operation of the said company and therefore such reasonable restrictions are valid under the law.

9. The plaintiff in para no.8 of the plaint has mentioned about the reasonable restrictions on the defendant vide letter dated 01.08.2011.

10. It is also stated in the plaint that despite being well aware of the rights and liabilities arising out of letter dated 01.08.2011, the defendant after leaving the plaintiff company on 30.12.2015 joined Vatech India, a subsidiary of the Vatech Global Company Ltd. with whom the plaintiff company are indulged in legal cases/litigations and the said parental company is also directly in

(4)

competition with the trade or business of products with the plaintiff company in India. It is also stated that the said act of defendant is breach of clause 4(g)(i) of the said letter dated 01.08.2011.

11. It is also stated in the plaint that the defendant has also breached clause 4(g) (ii) of the letter dated 01.08.2011 and used confidential information of the plaintiff company that were in his possession (detail of clients, designs, advertisement, future development plans of plaintiff's clients, etc.) during the course of his employment with the plaintiff's company which cause grave irreparable loss and damage to the plaintiff's company. It is also stated that the plaintiff's company through his counsel also sent a legal notice dated 27.07.2016 and thereafter file the present suit for mandatory injunction and recovery of Rs.5 lakhs as damages against the defendant.

12. The defendant filed his WS thereby admitting the appointment letter dated 01.08.2011 though the defendant has specifically stated that the restrictions in the appointment letter dated 01.08.2011 are unreasonable. The defendant has also stated that the plaintiff has no right to curtail the rights of the defendant as per Section 27 of the Contract Act and Fundamental Rights enshrined under article 19 and 21 of the Constitution of India.

13. The Hon'ble Supreme Court of India in Usha Balasaheb Swami And Ors. Vs. Kiran Appaso Swami and Ors. (2007) 5

(5)

SCC 602 held in paras no.17, 18, 19, 21 and 22 of the judgment which are as under:-

17. From a bare perusal of Order VI Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alternation and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order VI Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order VI Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.

18. It is now well settled by various decisions of this Court as well as those by the Hon'ble High Courts that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or

(6)

irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this Connection, the observation of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung may be taken note of. The Privy Council observed: (IA pp.216-17)

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another nor to change, by means of amendment, the subject-matter of the suit”.

19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has not

(7)

counterpart in the principles relating to amendment of the WS. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the WS would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

21. As we have already noted herein earlier that in allowing the amendment of the WS a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technically of law should not be permitted to hamper the courts in the administration of justice between the parties. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. this Court observed

“that the cause are more generous in allowing amendment of the WS as the question of prejudice is less likely to operate in that event”.

In that case this Court also held

“that the defendant has right to take alternative plea in defence which, however, is subject to an

(8)

exception that by the proposed amendment the other side should not be subjected to serious injustice”.

22. Keeping these principles in mind, namely, that in case of amendment of a WS the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the WS can also be allowed, we may now proceed to consider whether the Hon’ble High Court was justified in rejecting the application for amendment of the WS.

14. It is settled position that addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the WS can be allowed as long as the amending pleading do not result in causing grave and irretrievable prejudice to the plaintiff or displacing him completely. Nor by seeking amendment to the WS would be it open to a party to wriggle out of an admission as admission is a material piece of evidence who would be entitled to take advantage of that admission. However, the admission can be explained and it would be

(9)

permissible to add a rider and/or proviso thereto vide keeping the admission intact.

15. In view of this court, the defendant by way of proposed amendment is explaining the stand taken in his early WS and also adding legal pleas in his support and if the said amendment be allowed then the same shall not amount to withdrawal of the admissions made by the defendant and also the same shall not prejudice the plaintiff. The present matter is still at initial stage and issues are yet to be framed.

16. In view of the above-observations and judgment passed by the Hon'ble Supreme Court of India, the application under Order VI Rule 17 CPC filed by the defendant is hereby allowed subject to cost of Rs.5,000/- which is to be paid to the plaintiff on the NDOH.

17. Application is accordingly disposed off.

18. Defendant is directed to file amended WS within 15 days from today with an advance copy to the plaintiff.

19. Plaintiff is at liberty to file replication, if any thereafter within 15 days with an advance copy to the defendant.

(10)

20. Plaintiff and defendant are directed to file the affidavits of admission and denial of documents within 30 days from today with the advance copy to other side.

21. Parties are directed to produce original documents on the NDOH.

22. Put up for completion of pleadings, admission and denial of documents and framing of issues on 17.02.2024.

(Deepanker Mohan)
Additional District Judge-04
Shahdara District/KKD Courts/Delhi
22.12.2023