

CS DJ ADJ 17386/16 M/S KLLIFTON FORGE PVT LTD VE GLOBAL
ISPAT LTD

24.10.2024

Present: Sh. Jai Batra, Ld. Proxy counsel for Sh. Kunal Anand, Ld.
Counsel for plaintiff Ms. Meenakshi Garg, Ld. Proxy counsel for
Sh. Vishal Saxena, Ld. Counsel for defendant (through VC)

Put up for orders at 04:00 PM.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 24.10.2024

At 04:00 PM

Present: None.

1. Vide this order, this court shall adjudicate two applications i.e. application u/s 151 CPC for recalling order dt. 17.07.2017 to re-open PE and application u/s 151 CPC seeking substitution of AR of plaintiff company.

2. By way of present applications, plaintiff is seeking recalling of order dt. 17.07.2019 as well as substitution of AR on the ground that, PW Ms. Aarti Kapoor @ Aaurti Kapoor was suffering from various medical ailment and left for heavenly abode in 2019. Thus, it is prayed that Sh. Sompal Sharma, AR of plaintiff may be substituted for earlier AR/PW Ms. Aarti Kapoor @ Aaurti Kapoor and may also be permitted to lead evidence on plaintiff's behalf.

3. *Per contra*, Ld. Counsel for defendant vehemently opposed the above applications. It is submitted that, the present applications are an attempt

to cover up the serious lapses and casual approach of the plaintiff in contesting the present suit. It is further submitted that, at the time of disposal of application u/o IX Rule 9 CPC, it was argued on behalf of plaintiff that, since AR of plaintiff company has left for heavenly abode in 2019, plaintiff company remained unrepresented by any AR due to which main suit could not be follow up and dismissed in default. It is further submitted that, in the interest of justice and by taking sympathetic view, this court restored that suit at its original number but, now plaintiff is relying upon the board resolution dt. 30.07.2018 wherein Mr. Sompal Sharma was purportedly authorised as Authorised Representative of the plaintiff which is contradictory to the earlier submissions. It is further submitted that, present application is also barred by limitation as PE was closed in the year 2019 while present applications are filed in the year 2024 without disclosing any sufficient cause for delay. Lastly, it is submitted that, both applications deserves dismissal being untenable in law as Ms. Aarti Kapoor @ Aaurti Kapoor was neither Authorised Representative nor Director for the plaintiff company at any point of time.

4. Submission heard. Record perused.

5. Briefly stated, suit for recovery of Rs. 11 lacs along with interest filed by plaintiff through its Director Ms. Aarti Kapoor @ Aaurti Kapoor towards refund of advance payment of Rs. 11 lacs claimed to be paid by plaintiff against invoice no. GIL/719/2014-15 dt. 26.03.2015 for a sum of Rs. 11,81,250/-.

6. Record reveals that, initially summons were duly served upon the defendant and since none appeared for defendant despite repeated calls, it was proceeded ex-parte vide order dated 26.11.2016 passed by Ld. Predecessor of

this court. However, said *ex-parte* proceedings were set aside against defendant vide order dated 19.04.2017 and after completion of pleadings vide order dated 18.07.2017 following issues were framed:

- (1) *Whether plaintiff is entitled for decree of recovery of Rs 11 lacs, as prayed for? OPP*
- (2) *Whether plaintiff is entitled for interest, if so, at what rate? OPP*
- (3) *Whether this court has no territorial jurisdiction to deal with the matter? OPD*
- (4) *Whether the present suit is bad for non joinder and mis joinder of parties? OPP*
- (5) *Relief*

7. Record further reveals that, after filing evidence by way of affidavit on behalf of PW1 i.e. Ms. Aarti Kapoor @ Aaurti Kapoor, plaintiff failed to lead any evidence despite multiple opportunities. Hence, vide order dated 17.07.2019, PE stand closed. Record further reveals that, vide order dated 25.09.2019 present suit was dismissed in default for non-appearance and for non-prosecution. However, vide order dated 13.10.2023, this court allowed application u/o IX Rule 9 CPC filed on behalf of the plaintiff and restored the present suit at its original number.

8. Main contention of the defendant are three folds, *Firstly*, plaintiff has casual approach towards present proceedings since beginning due to which precious time of this court has been wasted. *Secondly*, present suit is frivolous and has not been instituted by authorised person of the plaintiff. *Thirdly*, the board resolution dt. 30.07.2018 in favour of Sompal Sharma is forged and fabricated as well as in contradiction to the submissions made by the plaintiff.

9. No doubt, plaintiff's approach to the present proceedings is casual in nature as matter was put up for PE on 09.11.2017 but, till 17.07.2019 no evidence lead on behalf of plaintiff. It was argued on behalf of the plaintiff that matter could not follow-up as Ms. Aarti Kapoor @ Aaurti Kapoor was seriously ill and left for heavenly abode on 27.09.2019 but, no plausible explanation is given on behalf of the plaintiff that if Sh. Sompal Sharma was already authorised as AR for plaintiff's company vide board resolution dt. 30.07.2018 what precluded him to pursue present proceedings.

10. It is well settled law that, plaintiff has to stand on his own leg and in case, pleadings are not signed/verified by any authorised signatory as per Order VI Rule 14 r/w Rule 15 CPC, plaintiff has to suffer. However, whether the present suit is properly signed/verified by the plaintiff or whether Ms. Aarti Kapoor @ Aaurti Kapoor is authorised representative/director of plaintiff company or not or whether resolution dt. 30.07.2018 in favour of Sompal Sharma is forged and fabricated is matter of trial for which evidence is to be lead by the parties.

11. Thus, in the interest of justice and considering the overall facts and circumstances of the present case, AR of plaintiff company is substituted and limited one opportunity is granted to plaintiff to lead PE on NDOH subject to cost of Rs. 10,000/- to be paid to the defendant. Both applications stands disposed off accordingly.

12. Further, considering the facts and circumstances of the present case, this court deems fit to frame following additional issues:

i. Whether the present suit is not properly signed/verified by the plaintiff? OPD

ii. Whether resolution dt. 30.07.2018 passed in favour of Sh. Sompal Sharma is forged and fabricated? OPD

13. Plaintiff shall file evidence by way of affidavit of the PWs atleast 15 days prior to next date of hearing with advance copy to other side.

14. Be listed for PE on **01.02.2025**.

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: 24.10.2024