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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 580/2021**

LARSEN AND TOUBRO LIMITED Plaintiff

Through: Mr. Manu Seshadri, Mr. Aveak
Ganguly and Mr. Sahil Maganani,
Adv.

Versus

NBCC INDIA LIMITED AND ANR Defendant

Through: Mr. Arvind Minocha, Sr. Adv. with
Mr. Krishan Kumar, Ms. Neetu
Sharma, Ms. Dhanlakshmi Iyer, Mr.
Seemant K. Garg, Mr. Nitin Pal,
Adv. for D-1.
Dr Subhash C Gupta, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.05.2024

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I.A. 9993/2024

1. This is an application filed by the defendant no. 1 under Order XIV Rule 5 of CPC for framing of additional issues.
2. Mr. Minocha, learned senior counsel for the defendant No. 1 has moved this application for framing of three additional issues which reads as under:-

- “1. Whether D-2 has paid all the pending bills, dues and entitlements under the contract to D-1? If not, its effect. (OPD-2)*
- 2. Whether D-1 has not received its bills, dues & entitlements under the 3 contracts from D-2? If not, its effect. (OPD-1)*
- 3. Whether the claims of the Plaintiff are barred under the 3 contracts entered into between the Plaintiff and D-1? If so, its*



effect. (OPD-1)”

3. Mr. Minocha, learned senior counsel states that in view of clause 37.3, the proposed additional issue Nos. 1 and 2 needs to be framed.

4. Issue Notice

5. Mr. Seshadri, learned counsel for the plaintiff accepts notice and states that he does not wish to file reply to the present application and shall address oral arguments.

6. As far additional issue No. 1 is concerned, after hearing learned counsels for the parties, I am of the view that the said issue concerned defendant No. 2 and 1 and not the plaintiff. In addition, defendant No. 2 has filed written statement wherein defendant No. 2 has stated that he has already made all the payments under the contract to defendant No. 1. If defendant No. 1 feels that all pending bill, dues and entitlement under the contract have not been cleared by the defendant No. 2 to defendant No. 1, it is a dispute inter se which does not concern the plaintiff. Hence, I am of the view that there is no need to frame additional issue No. 1.

7. With regard to additional issue No. 2 is concerned, the written statement of defendant No. 2 in paragraph 103 has categorically stated the defendant No. 2 has cleared all the dues of defendant No. 1 except the amounts which are held on account of defects noticed in the final bill submitted by the defendant No. 1.

8. According to me the issue with regard to dispute between defendant No. 1 and 2 cannot be framed in a suit where the plaintiff is claiming money dues and payable under the contracts between defendant No. 1 and 2. Further, nothing prevents defendant No. 1 from instituting and filing its own claim/suit against the defendant No. 2.



9. For the said reasons, in my view there is no need to frame additional issue Nos. 1 and 2.

10. As far as issue No. 3 is concerned, even though the same is covered in issue No. 3 and 12 but for complete clarity an additional issue is framed which reads as under:-

“16. Whether the claims of the Plaintiff are barred under the 3 contracts entered into between the Plaintiff and D-1? If so, its effect. (OPD-1)”

11. Mr. Minocha, learned senior counsel orally states that another issue be also framed “whether the plaint has been duly signed and verified.” It is ordered accordingly and the said issue is also framed which reads as under:-

“17. Whether the plaint has been duly signed and verified? (OPD)”

12. The application is disposed of in the above terms.

13. It is clarified that the schedule as indicated in the order dated 21.03.2024 shall be unaffected by the order passed today.

JASMEET SINGH, J

MAY 3, 2024/NG

[Click here to check corrigendum, if any](#)