



\$~22 to 24

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

+ **CS(COMM) 386/2016**

MR RAKESH JAIN

..... Plaintiff

versus

H S C C (INDIA) LTD & ORS

..... Defendants

+ **CS(COMM) 387/2016**

M/S TANYA HEALTHCARE & ORS

..... Plaintiffs

versus

H S C C (INDIA) LTD & ORS

..... Defendants

+ **CS(COMM) 395/2016**

M/S JENSON FINVEST PVT LTD

..... Plaintiff

versus

H S C C (INDIA) LTD & ORS

..... Defendants

Present:- Mr. Adarsh Priyadarshi & Mr. Sachin Tanwar, Advocates
for Plaintiff in Item Nos. 22 to 24.

Mr. Saurabh Mishra, Ms. Aashnaa Bhatia & Ms. Bhumi
Agrawal, Advocates for D-1 in Item Nos. 22 to 24.

Mr. Jaswinder Singh, Advocate for D-2 & 3 in Item Nos. 22
to 24. [M:- 9811232066]

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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02.02.2023

1. These suits were amended by orders dated 01.05.2019 [in
CS(COMM) 387/2016 and CS(COMM) 395/2016] and 03.05.2019 [in



CS(COMM) 386/2016]. Although all the three defendants were impleaded in the original suits, the decree sought was only against defendant No. 1. While allowing the applications for amendment [I.A. 1770/2018 in CS(COMM) 387/2016 and I.A. 1771/2018 in CS(COMM) 395/2016], the Court observed as follows:-

“1. The counsel for the plaintiff in both the suits has argued, (i) that the plaintiff in both the suits have sued for recovery of monies claimed to be due from the defendant No. 1 in each of the suits; (ii) however, besides the defendant No. 1, the Additional Director, CGHS Medical Store Depot and the Deputy Director General (St.), Directorate General of Health Services, New Delhi have also been impleaded as defendants No.2&3 in both the suits; (iii) that the defendant No. 1 in each of the suits in its written statement has pleaded that since in the matter of contract with the plaintiff in each of the suits, the defendant No. 1 was acting as an agent of disclosed principal i.e. defendants No.2&3, the defendant No. 1 is not liable; and, (iv) that the plaintiff in each of the suits thus has applied for amendment of the plaint to seek recovery of monies jointly and severally from all the defendants.

2. The counsel for the defendant No. 1 in each of the suits states that he has no objection.

3. The counsel for the defendants No.2&3 in each of the suits, though also contends that the defendant No. 1 was not acting as the agent of defendants No.2&3 but the said contention is a question on merits of the amendment and which is not to be gone into at this stage.

4. The principal contention of the counsel for the defendants No.2&3 is that in the suit as instituted, no claim was made against the defendants No.2&3 and the claim now sought to be made against defendants No.2&3 is barred by time.

5. Though the counsel for the plaintiff in each of the suits and the counsel for the defendants No.2&3 in both the suits are at variance as to which Article of the Schedule to the Limitation Act, 1963 will apply, with the counsel for the plaintiff in both suits controverting that the suit claim is barred by time, but again that is a question on merits of the amendment and which is not to be gone into at this stage.

6. Section 21 of the Limitation Act provides that where, after the institution of a suit, a new plaintiff or a defendant is substituted or added, the suit shall as regards him, be deemed to have been instituted when he was so made a party.



7. *The same would govern the apprehension of the counsel for the defendants No.2&3 qua limitation.*

8. *It is however open to the parties to, at the time of framing of issues or final arguments, as may be appropriate, contend that Section 21 of the Limitation Act does not apply owing to the defendants No.2&3 being already a party and that the Proviso to Section 21 of the Act is to apply.*

9. *On the aforesaid terms, the applications are allowed and disposed of.”*

2. The application for amendment in CS(COMM) 386/2016 [I.A. 2098/2018] was allowed on the basis of the aforesaid order in the other two suits.

3. Written statements to the amended suits have since been filed by defendant Nos. 2 and 3. By orders dated 19.02.2020 and 07.10.2022, learned counsel for the parties were permitted to argue on the question of limitation *qua* defendant Nos. 2 and 3.

4. Mr. Adarsh Priyadarshi, learned counsel for the plaintiff, makes the following principal submissions on this issue:-

- a. He submits that the case of the defendant No. 1, that it was an agent of defendant No. 2, had not been set up prior to filing of the written statement by defendant No. 1. As such the failure of the plaintiff to seek relief against defendant Nos. 2 and 3 in the suit, as originally filed, was due to a mistake made in good faith. Learned counsel therefore submits that, even assuming that Section 21(1) of the Limitation Act, 1963 [“the Act”] is applicable to the present case, the case would be covered by the proviso thereto, and it would be appropriate for the Court to direct that the suit, as regards defendant Nos. 2 and 3, was also instituted on the date of original filing.



- b. Mr. Priyadarshi submits that the written statement of defendant No. 1 contains an acknowledgment with regard to its liability as an agent of defendant No. 2 and limitation is, therefore, extended by Section 18 of the Act.
- c. Mr. Priyadarshi lastly submits that the period of limitation is extended under Section 19 of the Act by part payment received from defendant No. 1, who claims to be acting as agent of defendant No. 2.
5. Learned counsel points out that the question of whether defendant No. 1, in fact, acted as an agent of defendant No. 2 was framed as one of the issues in the suit prior to amendment. In the issues framed in order dated 18.09.2017 in CS(COMM) 386/2016, issue No. (v) relates to the claim of defendant No. 1 that it was acting as an agency/consultant of defendant No. 2.
6. It *prima facie* appears to me that the aforesaid contentions of Mr. Priyadarshi would have to be decided only after determining the question of agency as between defendant Nos. 1 and 2.
7. List on 19.04.2023 for submissions on the aforesaid.
8. Learned counsel for the parties are also requested to bring their proposed issues on the next date of hearing.

PRATEEK JALAN, J

FEBRUARY 2, 2023

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