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

+ **CS(OS) 3560/2014 & I.A. 36203/2024**

RAKESH KUMAR SINGH

.....Appellant

Through: Ms Abha Malhotra & Ms. Ramya
Tiwari, Advs

versus

GATI LTD

.....Respondent

Through: Mr. Shankar Kumar Jha, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.02.2025**

1. This hearing has been done through hybrid mode.

I.A.36203/2024 (for correction in order dated 26.05.2024)

2. This is an application under Section 152 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) filed on behalf of the Defendant seeking correction in the order dated 29th May, 2024 passed in ***Review Petition No. 223/2024*** filed in the present suit.

3. The present suit has been filed seeking recovery of Rs. 40,24,183/- along with pendent-lite and future interest @ 24% p.a. from the date of filing. The Defendant has also preferred a counter-claim for recovery of Rs. 4,00,00,000/- along with pendent-lite and future interest @ 24% p.a. etc.

4. The issues in the present suit and the counter-claim were framed *vide* order dated 2nd May, 2018. The issues as framed are as under:

“1. Whether this Court has no territorial jurisdiction to try and decide this suit, as alleged? OPD

2. Whether the plaint does not disclose any cause of action, as alleged? OPD

3. Whether the suit is barred by estoppels, acquiescence



and waiver, as alleged? OPD

4. Whether the defendant is entitled to counter claim of Rs. 4 crore, as prayed? OPD

5. Whether the defendant is entitled, to interest @ 24% per annum on the counter claim, as prayed? OPD

6. Whether the plaintiff is entitled to recovery of 40,24,183/-, as prayed? OPP

7. Whether the plaintiff is entitled to interest @ 24% w.e.f. filing of the suit till realisation? OPP

8. Relief, if any.”

5. Thereafter, the Plaintiff had filed an application under Order VII Rule 11(a) & (d) read with Section 151 of CPC seeking rejection of the counter-claim preferred by the Defendant on the ground that the same does not disclose a cause of action.

6. The said application was considered by the Court on 23rd April, 2024, and the Court disposed of the same, while granting the Plaintiff liberty to lead evidence to show that the counterclaim is not maintainable. The said order is reproduced hereunder for ease of reference:

“I.A. 8785/2024 (u/O VII Rule 11 CPC)

2. This is an application filed on behalf of the Plaintiff- Mr. Rakesh Kumar Singh under Order VII Rule 11 of the CPC, 1908 seeking rejection of the counter claim filed in CS(OS) 3560/2014.

3. It is stated in the application that the Plaintiff herein filed a suit for recovery of Rs. 40,24,183/- along with interest, aggrieved by the pending arrears in salaries, HRA, gratuity, etc.

4. The ground taken by the Plaintiff is that the counter-claim filed by the Defendant-Gati Ltd. does not disclose a cause of action.

5. It is noticed that the suit in this case was filed in 2014.



Issues were framed on 2nd May, 2018. The suit is at the stage of Plaintiff's evidence.

6. The Plaintiff has not led evidence in this matter, though the affidavit in evidence has been filed by the Plaintiff as directed vide order dated 27th August, 2019, 19th December, 2019 and 20th February, 2023. Repeated adjournments have also been sought on behalf of the Plaintiff on 19th December, 2019, 6th September, 2023 and 22nd December, 2023. In fact, costs have also been imposed on the Plaintiff vide order dated 19th December, 2019.

7. One of the issues which has been framed is whether the Counter Claimant/Defendant herein does not disclose cause of action. In respect of the said issue, the onus has been fixed on the Defendant.

8. According to Id. Counsel for the Plaintiff, counterclaim itself is not maintainable as the same does not disclose a cause of action.

9. It is made clear that since the matter is at the stage of trial, at this stage, the decision in the application would have an adverse effect on the final adjudication of the suit. Accordingly, parties are directed to expeditiously record their respective evidence. The application under Order VII Rule 11 CPC, 1908 is highly belated. The Plaintiff is however free to lead evidence that the counterclaim is not maintainable.

10. Application is disposed of."

7. Thereafter, Plaintiff filed a review application being **Review Petition No. 223/2024** seeking review of the order dated 23rd April, 2024. The review was sought on the ground that the Court had proceeded on a presumption that there is an issue framed to the effect that the subject counter-claim does not disclose a cause of action. However, no such issue had been framed by the



Court on 2nd May, 2018. Accordingly, the Court after hearing the parties, *vide* order dated 29th May, 2024 framed an additional issue which reads as under:

“4(a). Whether the Defendant’s counter claim does not disclose a cause of action? OPD”

8. The present application by the Defendant seeks correction in the said order framing the additional issue. The additional issue framed by the Court is in respect of non-disclosure of cause of action in Defendant’s counter-claim where the onus has been put on the Defendant as seen from the above, where it is marked ‘OPD’. The Defendant seeks rectification of the said order on the ground that the additional issue as framed, the onus ought to have been on the Plaintiff.

9. Ms. Malhotra, Id. Counsel for the Plaintiff disputes the said assertion on the ground that the Defendant has to establish whether his counter-claim discloses a cause of action.

10. The Court has heard the parties and perused the records of the case. It would be seen from the order dated 29th May, 2024 that the additional issue was framed when the **Review Petition No. 223/2024** was filed by the Plaintiff seeking review of the order dated 23rd April, 2024, wherein the Court had proceeded on the presumption that an issue had been framed in respect of non-disclosure of cause of action in the counter-claim. It was while allowing the said review application that the additional issue was framed.

11. A perusal of the order dated 23rd April, 2024 would show that the said order was passed in the application under Order VII Rule 11 CPC being **I.A.8785/2024**.

12. A perusal of *paragraph 7* of the said order would show that the Court



was of the view that the question, whether the counter-claim is not maintainable as the same does not disclose the cause of action, has to be adjudicated at the final hearing of the suit. It was in these circumstances that the additional issue was framed. Obviously, the Plaintiff is entitled to raise a defence that the counter-claim does not disclose a cause of action. However, the onus of proving the same would be on the Plaintiff and not on the Defendant.

13. Accordingly, the present application seeking correction of Order dated 29th May, 2024 is allowed. The additional issue is corrected and shall now read as under:

*“4(a). Whether the Defendant’s counter claim does not disclose a cause of action? **OPP**”*

14. It is made clear that insofar as proving the counter-claim on merits is concerned, the onus shall obviously be on the Defendant.

15. The present application is disposed of in the above terms.

CS(OS) 3560/2014

16. List before the Roster Bench on the date already fixed *i.e.*, on 27th February, 2025.

PRATHIBA M. SINGH, J.

FEBRUARY 06, 2025/dk/ms