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

+ CS(OS) 1856/2015

PRADEEP MEHRA

..... Plaintiff

Through: Mr.Saurabh Prakash and Mr.Kunal  
Gosain, Advocate

versus

BCH ELECTRIC LTD

..... Defendant

Through: Ms.Jasleen Oberoi and Mr.Gauhar  
Mirza, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

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**16.03.2017**

**I.A.2567/2017 (by plaintiffs u/O 6 R 16 and O 8 R 10 CPC)**

1. The present application has been moved by the plaintiff seeking rejection of the amended written statement filed by the defendant. The background of the case is that three plaintiffs filed the suit against the defendant.

2. The defendant moved an application under Order 7 Rule 11 CPC which was disposed of by this court vide order dated 19.09.2016. In the said application, the defendant had sought rejection of the plaint on the ground that the plaintiffs had combined their separate causes of action. This court relying on the findings of the Supreme Court in *Prem Lata Nahata vs. Chandi Prasad Sikaria* (2007) 2 SCC 551 instead of rejecting the plaint on account of misjoinder of causes of action, exercising its power directed all the three plaintiffs to file a separate suit. The relevant paragraph reads as

under:

*“5. The Court is satisfied that the plaint in the instant case , in its present form does seek to combine three distinct causes of actions involving three Plaintiffs. The common grievance is that their resignations were not voluntary. The further consequential relief sought is a declaration that the resignations per se are without consideration and do not constitute any binding contract as far as the Plaintiffs are concerned. However the averments as to how that result was brought about is different. In other words, while the main grievance and the relief claimed may be similar, the facts on which the reliefs are claimed are distinct and different. Therefore, there is merit in the contention of the Defendant that the suit in present form cannot be entertained.”*

3. In this paragraph the court has observed that the suit in the present form cannot be entertained. However, in para no.9, the Court issued certain directions, which is reproduced as under:

*“9. The Court considers it appropriate to permit the Plaintiffs in terms of Order II Rule 8 of the CPC to amend the plaint which in effect would mean trifurcating the present suit into three suits. Consequently, the following directions are issued:*

*(i) Within a period of eight weeks*

*(a) An application will be filed seeking to amend the plaint in the present suit so as to re-cast it as a suit by Plaintiff No. 1. The reliefs in respect of which court fees has been paid have already been set out in the prayer.*

*(b) two fresh suits be filed: one, in respect of the claim of Plaintiff No. 2 and another in respect of claim of Plaintiff No.3.*

*(ii) The Plaintiffs will not be required to pay any separate court fees, since they have already paid the applicable court fee.*

*(iii) It is made clear that as far as Plaintiff No.3 is concerned, since the claim is Rs. 1,81,08,813/-, the fresh suit will be filed before the Court having appropriate jurisdiction, subject to the above condition regarding payment of court fee.*

*(iv) The Defendant is barred from raising the plea of limitation in respect of any of the suits.”*

4. Pursuant to that, the three plaintiffs filed their individual suits. One suit by one of the plaintiffs was filed as per pecuniary jurisdiction in the High Court of Delhi and third plaintiff filed his separate suit before the District Courts, Delhi.

5. The remaining plaintiff i.e. the plaintiff of this suit moved an application i.e. I.A.13953/2016 under Order 6 Rule 17 CPC which was duly allowed by this court vide order dated 14.12.2016 upholding, however, the objection of the defendant that the plaintiff could not be permitted to raise additional pleas in the amended plaint. Subsequent to that, the plaintiff deleted para 8 and para 25 from the said amended plaint and filed another amended plaint dated 19.12.2016. The defendant thereafter filed its amended written statement to this amended plaint.

6. This application relates to this written statement wherein the plaintiff alleges that the defendant has brought on record several additional facts which he did not take up at the time of filing of the written statement to the original plaint. A chart has been drawn by

the plaintiff wherein it states that the original written statement of the defendant was consisted of 19 pages while the present one runs into 36 pages, the old one contained 7 paragraphs while the present one has 31 paragraphs with several sub paragraphs of preliminary objections. The parawise reply in the earlier written statement was of 19 paragraphs while this written statement is of 31 paragraphs with several sub paragraphs. It is argued that since the plaintiff was not permitted to add any additional facts in the amended plaint, the defendant also cannot be permitted to do so and has to confine itself to the original written statement filed by him.

7. The plaintiff has also relied on the findings of the Full Bench of this court in case of *Kedar Nath vs. Ram Parkash* 1998 VII AD Delhi 409.

8. The defendant had filed reply to this application and in this reply the defendant has submitted that in its amended written statement it has raised the same defences which it had raised in the earlier written statement except adding and taking few legal objections which is permissible under the law and can be taken at any stage. It is further submitted that there is a long history of litigation between the parties. All the three plaintiffs who had filed the original suit before this court had earlier filed individual petitions before the Controlling Authority under the Delhi Shops and Establishment Act, 1954 and then they withdrew those petitions and thereafter filed the joint plaint before this court. It is argued that on its application under Order 7 Rule 11 CPC, this court vide order dated 19.09.2016 has held that the suit in the present form was not maintainable and so the

original plaint was automatically considered as rejected but the court in exercise of its power and other provisions of CPC permitted the plaintiffs to file their separate suits. It is argued that it was the result of this order that the plaintiff moved a formal application under Order 6 Rule 17 CPC and filed the present amended plaint. It is submitted that the defendant has not changed his defence but has only elaborated it more in the present written statement and the law does not preclude it and the defendant is still ready to move a formal application seeking permission of the court if necessary for that purpose.

9. I have given thoughtful consideration to the rival contentions of the parties.

10. In the *Kedar Nath's* case (supra) this court has no doubt held that where a plaint has been amended, it does not automatically give the defendant the right to file written statement in future to file new written statement and any amendment in the written statement can be sought only with the permission of the court. There is no doubt that this is the settled proposition of law. The facts of this case are peculiar in nature in the sense that although the court was of the opinion that the suit of the plaintiff which was originally filed by three plaintiffs was bad for misjoinder of causes of action in view of Order 7 Rule 11 CPC yet permitted the plaintiffs to file their separate suits. It was result of this direction of the court in its order dated 19.09.2016 that the plaintiff sought amendment and file the fresh amended plaint in its individual capacity deleting the causes of action of the other two plaintiffs. In view of this it cannot be said that the plaint was

amended pursuant to Order 6 Rule 17 CPC rather the amended plaint was sought to be filed pursuant to the directions of this court dated 19.09.2016 whereby the plaintiff corrected its original plaint. Also during the course of arguments, the plaintiff except raising the objection that the amended written statement runs into more pages than the original written statement and have more paragraphs and other things, there is nothing which suggests that there is a substantial change in the defence raised by the defendant while filing its written statement to the original plaint. Defendant has also in its reply to the application clearly stated that it has not introduced any new defence in the said written statement. Even otherwise, the plaintiff shall have an opportunity to file its rejoinder wherein it can controvert any of the plea taken by the defendant. In view of this fact, I find no reason to reject the amended written statement. The amended written statement shall continue to be on record. Replication shall be filed within four weeks.

11. The application stands disposed of in the above terms.

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List the matter before the Joint Registrar for completion of pleadings and admission/denial of the documents on 19.04.2017.

**DEEPA SHARMA, J**

**MARCH 16, 2017**

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