

Plaintiff) Suit) Anil Gupta vs Babu Ram Singla, Proprietor-Singla ... on 30 September, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(OS) 201/2020

I.A. 6467/2020 (under Order XXXIX Rule 10 C

I.A. 6468/2020 (under Order XXXVIII Rule 5

I.A. 6469/2020 (exemption from filing court

I.A. 7354/2020 (under Section 151 CPC-amend
plaintiff)

I.A.7564/2020 (under Order VI Rule 17 CPC s
suit)

ANIL GUPTA

Represented by: Mr.S.D. Sin
versus

BABU RAM SINGLA,

PROPRIETOR-SINGLA SWEETS & ANR. ..

Represented by: Mr.Deepank Yadav,

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 30.09.2020 The hearing has been conducted through Video Conferencing. I.A. 7354/2020 (under Order VI Rule 17 CPC-amendment of plaint-by plaintiff) I.A.7564/2020 (under Order VI Rule 17 CPC seeking amendment of suit)

1. Considering that the dispute between the parties was a commercial dispute and the plaintiff had filed a suit simplicitor and the necessary compliances for a commercial suit were not there even in the first amended suit, the two applications have been filed.

2. The applications are disposed of permitting the plaintiff to amend the Signing Date:30.09.2020 17:45:41 This file is digitally signed by PS to HMJ Mukta Gupta plaint. Amended plaint is taken on record. However, a perusal of the suit would reveal that compliance under Section 12A of the Commercial Courts Act i.e. Pre Institution Mediation and Settlement has not been made. The plaintiff has neither filed an application seeking exemption nor leave in the present suit for exempting the plaintiff from the process under Section 12A of the Commercial Courts Act for Pre Institution Mediation and Settlement.

3. Learned counsel for the plaintiff states that the requirement of Section 12A of the Commercial

Courts Act is only in a suit which does not contemplate any urgent interim relief, however, since the plaintiff has filed an application under Order XXXVIII Rule 5 CPC and another application under Order XXXIX Rule 10 CPC and urgent interim reliefs, have been sought, there is no requirement of compliance of Section 12 A of the Commercial Courts Act.

4. By I.A. No. 6468/2020 the plaintiff has sought attachment before judgment of House No. 38, Dayanand Vihar, Delhi - 92 with direction to defendant No. 1 to make properties available to satisfy the decree and that appropriate restraint order be passed in the suit. Along with the said application, there is no affidavit filed which would show that the defendants are in the process of alienating House No. 38, Dayanand Vihar, Delhi - 92, one of the essential requirements under Order XXXVIII Rule 5 CPC. Mere bald averment in the application that the defendant No. 1 does not have any intention to satisfy the decree for the reason that the defendant No. 1 is in the process to dispose of the said property, does not satisfy the test of urgency.

5. In the application under Order XXXIX Rule 10 CPC, the plaintiff prays for a direction to the defendants to deposit the amount of Signing Date:30.09.2020 17:45:41 This file is digitally signed by PS to HMJ Mukta Gupta Rs.31,50,000/- as rental for the period of April 2020 to June 2020 before this Court. The said plea as per para 9 of the application is to subserve the interest of justice and not of urgency.

6. Hence the plea of the learned counsel for the plaintiff that since the plaintiff has sought for urgent interim relief, he does not need to comply with the provision of Section 12A of the Commercial Courts Act is unsustainable.

7. Issue summons in the suit subject to the plaintiff filing an application seeking exemption under Section 12A of the Commercial Courts Act to the defendants explaining urgency, returnable before this Court on 17th December, 2020.

I.A. 6467/2020 (under Order XXXIX Rule 10 CPC) I.A. 6468/2020 (under Order XXXVIII Rule 5 CPC) I.A. 6469/2020 (exemption from filing court fee)

8. List the applications on 17th December, 2020.

9. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

SEPTEMBER 30, 2020 SU Signing Date:30.09.2020 17:45:41 This file is digitally signed by PS to HMJ Mukta Gupta