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

+ CS(OS) 1664/2011, I.A.10801/2011

M/S VICTOR FOODS INDIA PVT LTD

..... Plaintiff

Through: Mr. Jayant K. Mehta, Sr. Advocate,
along with Ms. Manmeet Kaur, Ms.
Suditi Batra, Mr. Gurtejpal Singh and
Ms. Rudrakshi Deo, Advocates.

versus

HONEST GENERAL TRADING CO WLL & ORS

..... Defendants

Through: Mr. Aubert Sebastian and Mr. Vedant
Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **22.07.2022**

I.A.10574/2016 (Seeking amendment in Plaintiff)

1. An application under Order VI rule 17 CPC has been filed on behalf of the plaintiff seeking substitution of paragraph 18 of the plaint to incorporate that defendant No.1 had agreed to make the payment in the account of plaintiff maintained with Axis Bank, Barakhamba Road, New Delhi and subsequently part payment was received by the plaintiff in the aforesaid account. Therefore, the substantial part of cause of action arose within the territorial jurisdiction of this Court.

2. It is submitted in the application that though these facts were mentioned in the body of the plaint, but could not be specifically specified in

paragraph 18. A prayer is made that the plaint may be allowed to be amended accordingly.

3. Learned counsel for defendant No.3 has no objection if the application is allowed, as also defendant No.3 has moved an application for deletion of its name.

4. Considering the submissions made, the application is allowed.

5. Amended plaint is taken on record.

I.A.10976/2016 (Seeking permission to place Bank Statement of the Plaintiff)

1. An application under Order VII Rule 14 read with Section 151 CPC has been filed on behalf of the plaintiff seeking permission to file the Bank Statement of the plaintiff for the period March 2009.

2. Learned counsel for defendant No.3 has no objection to the same.

3. Defendant No.1 is ex-parte and defendant No.2 and 4 stands deleted.

4. The issues are yet to be framed in the present suit. The application is, therefore, allowed.

I.A.2238/2021 (For deletion of Defendant No.3 from Array of Parties)

1. An application under Order 1 Rule 10 CPC has been filed on behalf of defendant No.3 for deletion of its name from the array of parties.

2. It is submitted in the application that the plaintiff agreed to supply certain goods to defendant No.1. The payment of goods so shipped was agreed to be via 'collection of documents' or 'payment collection against goods'. The defendant No.3 Bank on being presented with the requisite documents, bills of exchange and on instructions of the Buyer's bank released the goods to the importer pursuant to acceptance by the importer of the bill of exchange drawn on the importer.

3. It is submitted that for the transactions, Axis Bank was appointed by the plaintiff bank and was playing the role of instructing bank of the plaintiff. Defendant No.3 was appointed as defendant No.1's bank and played the role of remitting bank. It had to act on the instructions of the plaintiff's bank. The entire transactions have been facilitated by plaintiff's bank acting as the agent of the plaintiff.

4. There were four bills of exchange and the controversy in the present suit is limited to third and fourth bill of exchange, both dated 06th September, 2008. The third and fourth bill of exchange were mistakenly drawn on the applicant instead of being drawn on defendant No.1. The defendant No.3 identified this error and informed the plaintiff's bank and communicated that in order to proceed with the instructions for collection of documents, the plaintiff Bank may either issue fresh bill of exchange correctly drawn in the name of defendant No.1 or the plaintiff bank may authorize the defendant No.3 to ignore the error in the Bill of Exchange and release the Third and Fourth Bill of Exchange on receiving. In response, plaintiff's Bank through its message dated 16th September, 2008 gave unequivocal authority to the defendant No.3 Bank to release the third and fourth bill of exchange. It is submitted that defendant no.3 was only acting on the directions of the plaintiff Bank and has no independent role. It is, therefore, submitted that the name of defendant No.3 may be deleted.

5. Learned counsel for defendant No.3 has submitted that it was only an agent of defendant No.1 having no independent liability. Furthermore, there is no relief which has been claimed against defendant No.3 in the plaint and there are also no allegations of any connivance or misconduct against defendant No.3. A prayer is, therefore, made that the name of defendant

No.3 be deleted.

6. Senior Advocate on behalf of the plaintiff has argued that there are specific averments in para (i) and (j) of paragraph 12 of the plaint clearly explaining the role of defendant No.3 in causing the loss to the plaintiff. Defendant No.3 being the agent of defendant Noi.1 is a necessary and property party and the name of defendant No.3 cannot be deleted.

6. Submission heard.

7. Considering the specific allegations made against defendant No.3 in the plaint and the specific role of defendant No.3 in having unauthorizedly released the Third and Fourth Bill of Exchange on the instructions of the plaintiff's bank (which is denied by the plaintiff), the name of defendant No.3 cannot be deleted.

8. The application is hereby dismissed.

CS(OS) 1664/2011

1. Learned counsel for defendant No.3 may file a written statement to the amended plaint within three weeks with copy to the counsel for the plaintiff, who may file the replication within two weeks thereafter.

2. Be listed before the learned Joint Registrar for admission/ denial of documents and for completion of pleadings on 23rd August, 2022.

NEENA BANSAL KRISHNA, J

JULY 22, 2022

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