



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

+ **C.M. (M) 1604/2005 & CM No. 10365/2005**

M/s Jindal Polyster Limited ... Petitioner
Through : Mr.Parag Tripathi, Senior Advocate
with Ms.Deepti Rajpal, Advocate

Versus

Sh. Rahul Jaura ... Respondent
Through : Mr. N.S.Bajwa, Advocate

CORAM :
HON'BLE MR. JUSTICE J.P. SINGH

ORDER
18.10.2005

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This petition under article 227 of the Constitution of India is directed against order dated 5.5.2005 dismissing an application under Order VI Rule 17 of Code of Civil Procedure, subject to cost of Rs.1000/-.

I have heard Mr.Parag Tripathi, Senior Advocate-learned counsel for the petitioner and Mr.N.S.Bajwa, learned counsel for respondent for final disposal of the matter and have gone through the impugned order and the file.

Briefly the facts are that the respondent herein (plaintiff in the trial court



hereinafter referred to as the 'plaintiff') filed a suit for recovery (Rs.7,02,700/- and a sum of Rs.47,300/- towards interest against the petitioner herein (defendant in the trial court hereinafter referred to as the 'defendant'). The defendant filed written statement denying that the plaintiff had been appointed as insurance consultant on the terms and conditions mentioned in the plaint and added that the appointment letter dated 29.4.1988 was issued by M/s Hindustan Synthetic Fibres, A Division of "Hindustan Pipe Udyog Limited" and not by the defendant. The correspondence done by "Hindustan Pipe Limited" with the plaintiff was also denied. Thereafter, the plaintiff filed an application under Section 340 of Code of Criminal Procedure, levelling allegations of perjury against the defendant.

The defendant then realized its mistake because the earlier name of the defendant-company was "M/s Hindustan Pipe Udyog Limited" and "Hindustan Synthetic Fibres" was a division of "Hindustan Pipe Udyog Limited". In the year 1992 the name "Hindustan Pipe Udyog Limited" was changed to "Jindal Polysters and Steel Limited", which name was again changed to "Jindal Polysters Limited" in the year 1995. Therefore, through application under Order VI Rule 17 CPC the mistake was sought to be rectified.

The explanation given for the amendment was that there was a



communication gap between the defendant and his earlier counsel and that Mr. Sumeet Maheshwari, who joined the defendant as Company Secretary in the year 1994 was not very much acquainted with the fact that the earlier name of the defendant company was "Hindustan Pipe Udyog Limited". It is submitted that it was a lapse on the part of the Company Secretary who signed on behalf of the company, and it was a bonafide and unintentional inadvertance. There was no ulterior motive. With this explanation the written statement was sought to be amended and the proposed amendments were mentioned in the application under Order VI Rule 17 CPC, supported with an affidavit of said Mr. Sumeet Maheshwari.

The application was opposed on the ground that the scope of application under Order VI Rule 17 CPC was limited and that the defendant was trying to wriggle out of the situation that had arisen on moving of an application under Section 340 Cr.P.C. and that the fact about change of the name was within the knowledge of the defendant and despite that the defendant denied the appointment of the plaintiff. The trial court observed that issues had already been framed, therefore, it was too late to seek amendment.

Learned counsel for the defendant has submitted that there could not be any intentional or malafide denial and since the Company Secretary was new



and the written statement had to be filed at the earliest, therefore, it was quite possible that he missed to see the records and know about the history of the company and failed to communicate properly to the learned counsel. On the other hand learned counsel for plaintiff has vehemently opposed the amendment stating that the defendant and its employee were rather trapped for perjury, therefore, they cannot be allowed to walk out of it.

After hearing both the learned counsel for the parties, I am of the view that so far as the application under Section 340 Cr. PC is concerned, it is established law that this has to be dealt with normally at the time of final disposal of the matter and after the trial court judge forms an opinion that an offence of perjury had been intentionally committed and that it was expedient in the interest of justice to lodge a complaint under the provisions of the Indian Penal Code. I am not elaborating on this point and rather leave it to the court concerned to deal with it, at the appropriate stage.

I find force in the contentions of the learned counsel for the petitioner-defendant that there was change of names repeatedly about the defendant company and the company could not run away with any averment about its denial of the appointment of plaintiff, because it was a matter of their record and that is why at the earlier opportunity the mistake was sought to be rectified.



In my view, the parties should get a chance to contest the case on merits.

Considering all the facts and circumstances of this case, I am of the view that the defendant has made out a case for amendment under Order VI rule 17 CPC. I, therefore, allow the petition and set aside the impugned order but since the plaintiff has been put to inconvenience and delay, it will be in the fitness of the things to impose a cost of Rs.10,000/- (Rupees Ten Thousand Only). The application for amendment is allowed, subject to the above mentioned cost. Needless to say that on such miscellaneous procedural matters it is only the plaintiff's case that is getting delayed. The parties are directed to appear before the trial court on 7th November, 2005 and the petitioner-defendant will file amended written statement within 14 days from the said date. The plaintiff will file replication. Issues may be re-framed accordingly. Nothing said herein will tantamount to expression of opinion on the merits of this case.

October 18, 2005
'nvn'

A handwritten signature in black ink, appearing to be 'J.P. Singh', written over a printed name.

J.P. SINGH, J.