

(2021) 08 DEL CK 0090

Delhi High Court

Case No: Civil Miscellaneous (Main) No. 324 Of 2021

Valo Automotive Pvt Ltd

APPELLANT

Vs

Sprint Cars Pvt Ltd &amp; Ors.

RESPONDENT

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Date of Decision: Aug. 18, 2021

**Acts Referred:**

- Constitution Of India, 1950 - Article 227
- Code Of Civil Procedure, 1908 - Order 11 Rule 1(1)(c)(ii), Order 2 Rule 2, Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5, Order 11 Rule 5, Order 12 Rule 6, Order 7 Rule 14, Order 6 Rule 17

**Hon'ble Judges:** Asha Menon, J**Bench:** Single Bench**Advocate:** Zahid, Ritik Malik, Akhil Suri**Final Decision:** Allowed

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**Judgement**

Asha Menon, J

1. This petition under Article 227 of the Constitution of India has been filed by the petitioner/plaintiff before the learned District Judge, Commercial

Court-02, South-East District, Saket, Delhi, being aggrieved by the order dated 15th March, 2021, whereby, its applications under Order VI Rule 17

and under Order VII Rule 14 of Code of Civil Procedure, 1908 (â€ˆCPCâ€™™, for short) for amendment of the plaint and for placing on record the

additional documents respectively, were dismissed.

2. The petitioner/plaintiff had filed a suit bearing CS No.1299/2018 against Sprint Cars Pvt. Ltd., for the recovery of Rs.31,65,271/- along with the

interest. The petitioner/plaintiff claims that certain documents and statement of accounts were already placed by it on the record. Summons were

issued to the respondents/defendants and they filed their first appearance on 18th October, 2018. They took time to file written statement. In the meantime, on 27th November, 2018, the court referred the matter to the Mediation Centre, Saket Court, for attempting an amicable settlement between the parties, which however, failed. The suit then continued in the court and on 21st December, 2018, the respondents/defendants filed their written statement. The case was then fixed for filing of replication. On 11th March, 2019, the petitioner/plaintiff filed the compilation of rejoinder affidavit to the written statement along with an application under Order XII Rule 6 read with Order VIII Rules 3, 4 & 5 CPC for judgment on admission. An application under Order VI Rule 17 CPC was also filed for amending the plaint. The application under Order VII Rule 14 CPC was filed for bringing on record documents, such as, further invoices, to substantiate the amendment sought, which was for enhancing the suit claim from Rs.31,65,271/- to Rs.39,03,396/-. There was no change brought to the remaining part of the plaint.

3. By the impugned order, the learned Trial Court rejected the application for amendment observing that since the amendment would be resulting in allowing the claim, which was relinquished by the plaintiff at the time of filing of the suit, it could not be allowed. Further, the pleadings have been completed and no reason for filing an application for amendment and bringing additional documents on record was given, except to claim that the bills and invoices were traced subsequently. The application under Order VII Rule 14 CPC was dismissed taking a view that since the amendment was not allowed, these documents could not be filed by the plaintiff in view of the amended Order XI Rule 5 CPC, as the dispute was a commercial dispute.

4. Mr. Zahid, learned counsel for the petitioner/plaintiff, submitted that the learned Trial Court had misdirected itself in holding that the amendments were belated and that the petitioner/plaintiff had given up the claim that it was belatedly seeking to incorporate in the plaint. The learned counsel submitted that there was no material change to the nature of the suit, as the only amendment that was sought, was the enhancement of the total sum of the claim from Rs.31,65,271/- to Rs.39,03,396/-. It was further submitted that the amendment had been sought at the earliest, as time had been

spent, not due to the fault of the petitioner/plaintiff, but, as the matter had been pending before the Mediation Centre. It was submitted that when the respondents/defendants denied having raised invoices, a thorough search was made and the documents and additional invoices were discovered, which also revealed that the respondents/defendants had to pay much more to the petitioner/plaintiff. Hence the application was moved.

5. Mr. Ritik Malik, learned counsel for the respondents/defendants, submitted that the orders of the learned District Judge, Commercial Court, was in

accordance with law and no ground was made out for allowing the amendment. It was submitted that the suit had originally been filed for

Rs.31,65,271/-. The bills and invoices now sought to be placed on the file were available to the petitioner/plaintiff, even at the time of filing of the suit.

It was submitted that having all the documents with them, the petitioner/plaintiff nevertheless, chose to file the suit for a lesser amount. In these

circumstances, the learned Commercial Court, had rightly concluded that by filing a suit for a lesser amount, the petitioner/plaintiff had given up the

claim for the remaining amount. Hence, under Order II Rule 2 CPC, they could not have been allowed to carry out the amendments as prayed for.

The learned counsel has placed reliance on the judgment of the Supreme Court in *Revajetu Builders & Developers Vs. Narayanaswamy & Sons*,

(2009) 10 SCC 84, to submit that if the amendments were of such a nature where a fresh suit could be barred, then the amendments ought not be

allowed.

6. It is to be seen that the original plaint was filed for recovery of Rs.31,65,271/- with the interest @ 18% per annum against four defendants. A

common written statement appears to have been filed on their behalf by their Directors, Mr. Anuj Kapoor and Mr. Atul Kapoor. They have denied the

liability to pay any amount to the petitioner/plaintiff, and also claimed, that no invoices had been raised and that in any case, even, as per the

petitioner/plaintiff, the parties had settled the accounts. In other words, while there does not appear to be any denial that the parties were transacting

with one another, but the respondents/defendants denied the existence of invoices as also any liability to pay.

7. In this background, when the application under Order VI Rule 17 CPC was filed specifically recording that it was after laboriously and meticulously going through the record, to answer the claim of the respondents/defendants that they have never raised any bills or invoices, that the documents could be traced, a sound explanation has come forth. Once the documents were traced and connected to the Ledger Account for various years, the petitioner/plaintiff has sought to bring on record all those documents in support of the claim, which now had to be modified to include a further sum of Rs.7,38,125/-.

8. Order VI Rule 17 CPC permits the court to consider and allow amendments to pleadings, as may be necessary, for the purpose of determining the real question in controversy between the parties. Where the application is moved after the trial has commenced, even then the court may allow amendments, on being satisfied that the averments sought to be introduced by way of amendments were not included in the pleadings at the initial stage despite due diligence. In the present case, not only has the trial yet to commence, the suit is at a very preliminary stage. The learned Commercial Court had granted to the petitioner/plaintiff an opportunity to file the replication. That is when the liberty to file documents and amendments were sought. Moreover, the amendment is not seeking to change the nature of the suit, which remains one for recovery. The petitioner/plaintiff cannot be denied an opportunity to meet the claim of the respondents/defendants raised in the written statement that there were no invoices or bills raised. In order to allow the court to determine fully the dispute between the parties, it is the considered view of this Court that the amendments are necessary. Effective adjudication of the controversy and avoidance of multiplicity of judicial proceedings are factors that have to be considered.

9. That the petitioner/plaintiff has not relinquished any claim is evident from the fact that at the earliest, he has sought a correction in the suit claim. It would have been different had he continued the suit with the same claim and obtained a decree for the said amount. Then, even if there was an oversight in making the correct claim, the mistake will seal his right to claim that amount in a fresh suit, as if for the balance amount. Order II Rule 2 CPC

has no application at the stage of deciding an application under Order VI Rule 17 CPC to amend the plaint, unless it is to incorporate claims that could have been raised in an earlier suit. It cannot be used to deny correction of claims at the initial stage of the case, when pleadings have not been completed.

10. The learned counsel for the respondents/defendants has argued that the amendment ought not to be allowed because the second suit for the additional amount would be barred under Order II Rule 2 CPC, and relies on the judgement in *Revajeetu Builders* (supra). But a perusal of the said judgement does not support his contentions. Rather, the factors listed in the said judgement reflect that the learned Commercial Court has not considered the need for the amendments for the just disposal of the case. The relevant para of the judgement of the Supreme Court in *Revajeetu Builders* (supra) is reproduced below for ready reference:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration

while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date

of application.”

11. From the above, it is also clear that the contention of the learned counsel for the respondents/defendants that amendments sought were to be

disallowed, as the petitioner/plaintiff would have been barred from filing a second suit for the said sum, is fallacious. The Supreme Court had held that if the amendment sought to incorporate a claim that was clearly time barred, such an amendment could not be allowed. That is not the plea taken before this Court.

12. The learned Trial Court has referred to the provisions of Order XI Rule 5 CPC, as applicable to the commercial disputes. But, it has overlooked the provisions of Order XI Rule 1(1)(c)(ii) CPC, which permits the plaintiff to file documents in answer to the case set up by the defendant subsequent to the filing of the plaint. The precise case of the petitioner/plaintiff is that when the respondents/respondents denied that invoices were ever raised, the application was moved to bring the invoices on record. Under Order XI Rule 5 CPC, the court can grant leave to the plaintiff to file documents, not filed with the plaint. The learned Commercial Court erred in over-looking these provisions of the CPC.

13. The impugned orders are therefore liable to be and are set aside, as being erroneous. The petition is allowed.

14. The petitioner/plaintiff is granted one opportunity to file the amended plaint along with the documents and statement of truth, before the learned Commercial Court, within two weeks from the date of this order. The copy shall be also served in advance to the learned counsel for the respondents/defendants. However, this opportunity is granted to the petitioner/plaintiff, subject to cost of Rs.10,000/-, which shall be paid to the learned counsel for the respondents/defendants, before the next date of hearing, before the learned Commercial Court.

15. The judgment be uploaded on the website forthwith.