Item No.17

New CS No. 52687/16

29.03.2017

Present: Sh. Rachit Devgan and Sh. Ashwini Kumar Singh, counsel for plaintiff.
Sh. Deepak Prakash Sharma, counsel for defendant.

Amended memo of parties filed. WS filed. Copy supplied.

1. Although, the WS is wholly deficient in material particulars. Firstly, the WS vaguely claims that plaintiff has not performed his part of the bargain i.e. defective and burnt goods were not replaced. Although, there is not even a whisper as to when and what got burnt? What was the value of the parts that got burnt? When was the plaintiff notified about defective or burnt parts? What was the response of the plaintiff to the request, if made?

2. The provisions of Order 8 Rule 3 & 4 of CPC are relevant and same are being reproduced for ease of reference:

> 3. *Denial to be specific.- It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit truth, except damages.*
> 4. *Evasive denial.-Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he*

received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

3. What is the effect of failing to comply with Rule 3 & 4 of Order 8, CPC is provided in Rule 5 of Order 8 and same is also quoted for ease of reference:

Specific denial.- [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

[(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such

decree shall bear the date on which the judgment was pronounced.]

4. Therefore, the Code of Civil Procedure makes it incumbent on the defendant to specifically deny the allegations made in the plaint and it is not sufficient for defendant to generally deny the allegations in one or two sentences. Of course, if the pleadings set up a diverse case in response which is so inconsistent with the averment in the plaint so as to be mutually destructive it may be treated as implied denial. That is not a case here.

5. The defence in the written statement is most evasive and in a way admits that the transaction as alleged did take place and goods as described in the plaint and of the value stated in the invoices were supplied to the defendant. At the most it can be said that defendant is setting up a defence on additional facts that the goods were defective/burnt and not replaced. Ordinarily under Order 18 Rule 1 of CPC defendant in these circumstances would have a right to began and the following issues would have been framd:

firstly, whether there was any deficiency in goods and services of the plaintiff? OPD;

secondly, whether this court has no territorial jurisdiction? OPD.

6. These are the only issues identifiable on the basis of what is said in the plaint and written statement. However, I am

unable to treat them as issues of facts in the present case for the following reasons:

Firstly, there are no details mentioned as to when and what got burnt? What was the value of the parts that got burnt? When was the plaintiff notified about defective or burnt parts? What was the response of the plaintiff to the request, if made? Nothing is pleaded.

Secondly, no documents have been filed by the defendant in support of the stand in Written Statement. There are other relevant provisions of law which I cannot ignore. Order 8 Rule 1A of CPC provides all documents on which the defendant relies have to be filed alongwith the WS and in fact, the documents cannot be taken on record subsequently at another stage. The pleading regarding goods being burnt as I have said is wholly innocuous and in absence of any document in support of the pleadings it cannot even be ascertained as to what was the alleged defect. It is settled law that facts not pleaded cannot be proved or permitted to be proved by leading evidence. In the present case, there are no pleadings and no documents therefore, issue no.1 does not calls for recording of evidence.

7. In view thereof, the present case has to be decided only on the basis of issue of jurisdiction of this court. I may note that the averment in para 15 of the plaint which categorically states that the contract was formed at New Delhi where the purchase

order was received. I may quote here para 15 of WS where there is no denial of this fact:

> *That the contents of the corresponding paragraph 15 of the suit under reply are wrong and denied. The defendant would like to place its reliance on the copy of the invoice annexed by the plaintiff along with its plaint which admittedly mentions specifically that the Courts at Rudrapur shall be having jurisdiction in relation to any dispute amongst the parties to this plaint hence it is denied and disputed that the suit under reply has been filed in the court having appropriate jurisdiction as alleged or even otherwise for which reason the plaintiff be put to strict proof thereof as the contents of the plaint are not only contrary to the record but are self contradictory as well.*

8. Therefore, all that has been stated in WS on aspect of territorial jurisdiction is that the invoice notes that courts in Rudrapur shall have jurisdiction. It has not been pleaded by defendant that any part of cause of action arose within the jurisdiction of courts in Rudrapur. Since there is no fact in dispute, the issue can be decided as a pure question of law.

9. Ld. Counsel at this stage submits that he needs time to trace case law on this aspect.

10. Ld. Counsel also submits that he wishes to know whether the kind of scrutiny the WS has received today from the court is given to plaints filed by the plaintiff. The comment though

casting an allegation on the court and contemptuous is ignored as seems to be intended to provoke the court. I think the WS is so deficient that in order to cover the defects now allegations are being leveled on the court.

11. The question of jurisdiction as a pure question of law can also be decided at this stage itself. There is no averment in the WS that any part of cause of action arose in Rudrapur. It is settled law that jurisdiction can be confined to one out of several courts having jurisdiction by agreement between the parties. An agreement confining jurisdiction to any one court has to be strictly construed as it takes away jurisdiction of a court. The intention must be clear from the agreement. Also in case the court to which jurisdiction is confined is not having jurisdiction than even by agreement parties cannot confer jurisdiction on that court.

12. Section 20 of CPC lays down rules of jurisdiction. The defendant's residence being of primary importance. In this case the defendant's address is of Gurgaon as per the memo of parties. It has orally been stated that the registered office of the defendant is at Nehru place i.e. within the territorial jurisdiction of this court. As per the plaint contract was concluded at the Okhla office of the plaintiff i.e. the cause of action arose within the jurisdiction of this court. There are no averments in the plaint or in the WS that any part of cause of action arose anywhere else. The defendant has not stated that a part of cause of action arose in Rudrapur or which part

cause of action arose within Rudrapur. Therefore, from the pleadings at least, I can conclude that no part of cause of action arose in the State of Uttrakhand. If that is so courts in Rudrapur cannot be conferred jurisdiction by way of agreement between parties. In any event, these goods were also received at IMT, Manesar, Gurgaon which is not in the State of Uttrakhand. Reliance is placed upon the decision in ***A.B.C. Laminart Pvt. Ltd. & Anr vs A.P. Agencies,*** **AIR 1989 SC 1239.**

13. Lastly, the agreement should be clear and unambiguous. One of the invoices states that *subject to Uttrakhand jurisdiction* and the other document i.e. *transport challan states all disputes shall be decided by Rudrapur court and they both pertain to the same invoice.* Therefore, the term is not certain and not capable of being made certain and cannot be treated as an agreement conferring an exclusive jurisdiction to any one court.

14. Both the grounds are therefore, not issues of fact and cannot go to trial. In view of the provisions of Order 8 Rule 3, 4, & 5 of CPC the claim in the plaint is deemed admitted. What else is the plaintiff required to prove in the present case when the base allegation has not even been disputed. The provisions of order 12 Rule 6 of CPC are relevant and are being quoted for ease of reference:

> **"*6. Judgment on admissions.-*** *(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or*

in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may thing fit, having regard to such admissions."

15. In **Ravi Shankar Sharma vs Kali Ram Sharma,** CS(OS) No.2329/1999 order dated 07.09.2012, a Ld. Single Judge of Delhi High Court has held that:

"6. As per the provisions of Order 12 Rule 6 CPC, a Court is entitled to decide the suit on the basis of admitted facts at any stage. The intendment of Order 12 Rule 6 CPC is that litigants should not undergo rigours of long pendency of a case and tribulations of a trial if on the admitted facts the entitlement of the plaintiff to the reliefs is not made out. The salutary object under Order 12 Rule 6 CPC is utilized in order to cut short such litigation which should no longer remain pending."

16. In **Kesav Chander Thakur vs Krishan Chander**, RFA(OS) No. 86/2013 Delhi High Court, decided on 09.05.2014, it has been observed:

" There is no requirement in Order XII Rule 6 CPC for filing of a formal application. The Court can on its own motion without any application by a party proceed to pass a decree on admissions as stated in Order XII Rule 6 CPC."

17. Considering the entire facts and circumstances of the

present case, i.e. the evasive denial which can be considered as admission an order under Order-12/Rule-6(1) CPC is being passed.

18. The present suit is decreed for the sum claimed i.e. Rs.221944/- alongwith pendente lite and future interest @ 9% and 6% respectively.

19. Decree sheet be prepared. File be consigned to Record Room.

(Harjyot Singh Bhalla)
ACJ/CCJ/ARC-(SE)
Saket Court, New Delhi-29.03.2017