



2024:DHC:8785



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

Reserved on: 28.08.2024
Pronounced on: 14.11.2024

+ CS(COMM) 1318/2018

BALCORP LIMITED

.....Plaintiff

Through: Mr. Rakesh Tiku, Sr. Adv. with
Ms. Arpan Wadhawan, Mr. Dev
Ashish Mishra, Mr. Monu
Kumar and Mr. Sandeep
Kumar, Advs.

versus

M/S GANGA RAM BRIJ MOHAN

.....Defendant

Through: Mr. Ankit Jain, Mr. Shiven
Khuana, Mr. Manjit Singh and
Mr. Aditya Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

I.As.1953/2020, 9616/2023 & 37751/2024

1. By the present Judgment, this Court shall dispose of the above applications.
2. I.A.1953/2020 has been filed by the plaintiff praying for a direction to take off the record the written statement filed by Mr.Ankit Goel, and pass a Judgment against the defendant as arrayed.
3. On the other hand, I.A.9616/2023 has been filed by Mr.Ankit Goel claiming therein that as the defendant has been arrayed in the name of a proprietorship concern, which is not a legal entity, the Suit be rejected under Order VII Rule 11 of the Code of the Civil



Procedure, 1908 (in short, 'CPC') as being barred by law.

4. I.A. 37751/2024 has also been filed by Mr. Ankit Goel seeking permission of this Court for Mr. Brij Mohan Goel to endorse the written statement filed on behalf of M/s Ganga Ram Brij Mohan, by affixing the signatures of Mr. Brij Mohan Goel thereon and to permit Mr. Brij Mohan Goel to file a separate affidavit/statement of truth adopting the stand of M/s Ganga Ram Brij Mohan as taken in the written statement.

CASE OF THE PLAINTIFF IN THE SUIT:

5. This Suit has been filed by the plaintiff seeking recovery of the alleged loss suffered by the plaintiff due to the alleged breach of the contractual obligations on the part of the defendant firm. By way of this Suit, the plaintiff seeks the following reliefs against the defendant:

*“(a) Pass a decree in favour of the Plaintiff and against the Defendant thereby granting a sum of US\$ 3,61,665 towards losses incurred by the Plaintiff on account of the breach of contracts by the Defendant,
(b) Award pendente lite and future interest @ 12 % per annum to the Plaintiff till date of realization of the aforementioned amount by the Plaintiff;
(c) Award costs in favour of the Plaintiff.”*

6. It is the case of the plaintiff that it is a company incorporated in Canada and is *inter alia* engaged in the business of exporting California almonds from USA to various countries including India. The plaintiff asserts that the defendant, M/s Ganga Ram Brij Mohan, is a sole proprietary firm of Shri Brij Mohan Goel, its proprietor.



7. It is the case of the plaintiff that the plaintiff, through its agent in India, namely, SJSS Trade Links Pvt. Ltd., entered into four contracts with the defendant firm, dated 24.04.2015, 25.04.2015, 02.05.2015, and 07.05.2015, for the supply of California almonds. The details of these contracts are mentioned herein below:

“(a) CAL/039/2015/NPIS dated 24.04.2015 for supply forty five thousand pounds (45000 Lbs.) @ US\$ 3.54 per Lbs FAS based on 70% yield. The shipment under the said contract was to be done in October 2015.

(b) CAL/042/2015/NPIS dated 25.04.2015 for supply of forty five thousand pounds (45000 Lbs.) @ US\$ 3.54 per Lbs FAS based on 70% yield. The shipment under the said contract was to be done in October 2015.

(c) CAL/044/2015/NPIS dated 02.05.2015 for supply of forty five thousand pounds (45000 Lbs.) @ US\$ 3.58 per Lbs FAS based on 70% yield. The shipment under the said contract was to be done in October 2015.

(d) CAL/052/2015/NPIS dated 07.05.2015 for supply of forty five thousand pounds (45000 Lbs.) @ US\$ 3.61 per Lbs FAS based on 70% yield. The shipment under the said contract was to be done in October 2015.”

8. The plaintiff asserts that the plaintiff shipped the abovementioned quantities of California almonds in accordance with the aforesaid contracts and the shipping schedule agreed upon with the defendant. Thereafter, the plaintiff raised the following four invoices in respect of the almonds supplied under the aforesaid four contracts:

“(a) Invoice No. 151109 dated 26.11.2015 for a sum of US\$ 1,66,950 under contract GAL/



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039/2015/NPIS dated 24.04.2015.

(b) Invoice No. 151034 dated 02.11.2015 for a sum of US\$ 1,59,075 under contract CAL/042/2015/NPIS dated 24.04.2015.

(c) Invoice No. 151011 dated 26.10.2015 for a sum of US\$ 1,68,210 under contract CAL/044/2015/NPIS dated 02.05.2015.

(d) Invoice No. 150973 dated 20.10.2015 for a sum of US\$ 1,62,090 under contract CAL/052/2015/NPIS dated 07.05.2015.”

9. It is the case of the plaintiff that the defendant failed to take delivery of the almonds supplied under the aforesaid four contracts and also failed to make the payment for the same. The plaintiff avers that the plaintiff made several attempts to contact the defendant to take delivery of the consignment lying at the custom port in India and make the payment for the same. Thereafter, the defendant wrote an email dated 22.12.2015 to the plaintiff, wherein, the defendant refused to accept the delivery of the aforementioned consignments as the defendant did not have the capital required to clear the goods from the custom port. The defendant also offered to compensate for the loss suffered by the plaintiff in due course.

10. The plaintiff replied to the email dated 22.12.2015 of the defendant, through an email dated 24.12.2015, wherein the plaintiff requested the defendant to issue No Objection Certificates in favour of SJSS Trade Links Pvt. Ltd. for the re-consignment of the four shipments that were shipped in the name of the defendant. The plaintiff, through the said email, also asked the defendant to discuss as



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to how the loss incurred by the plaintiff shall be compensated by the defendant.

11. It is the case of the plaintiff that since the California almonds that were shipped by the plaintiff through the aforementioned consignments are perishable goods, which had been lying at the customs depot for quite some time, and also since the plaintiff was incurring additional demurrage, and other charges and duties, the plaintiff endorsed and sold the said shipments to one M/s Sardar Jagjit Singh & Sons. In the meantime, the defendant also issued the No Objection Certificates dated 27.12.2015 to the Deputy Commissioner of Customs, Import Department, Jawahar Customs House, Nhava Sheva, Mumbai, for endorsement of the said shipments.

12. The plaintiff avers that for the consignments, the defendant was required to pay a sum of USD 6,56,325.00, however, the plaintiff was able to recover only a sum of USD 3,82,050.00 after endorsing the consignments to M/s Sardar Jagjit Singh & Sons, thus incurring a loss to the tune of USD 2,74,275.00.

13. The plaintiff claims that due to the conduct of the defendant, it incurred a loss of USD 2,74,275.00 in form of the difference in the contract price and the net sale price, various expenses and costs incurred towards demurrage, ground rent, duties and other levies, and other expenses related or incidental to the change in the consignee for the aforementioned shipments.

14. The plaintiff avers that even after multiple follow-ups and reminders, the defendant failed to make good the losses suffered by the plaintiff. The plaintiff even shared a statement of loss with the



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defendant through an email dated 02.02.2017. The plaintiff claims that the said statement of loss was neither denied nor disputed by the defendant, however, the defendant still failed to make the payments against the said statement.

15. It is the case of the plaintiff that since the defendant refused to make the payment for the loss suffered by the plaintiff, the plaintiff, through their counsel, served a legal notice of demand to the defendant on 02.07.2018. The said legal notice was neither complied with nor replied to by the defendant. The plaintiff, therefore, filed the present Suit for recovery.

PROCEEDINGS IN THE SUIT:

16. The summons in the present Suit was issued by the learned Joint Registrar (Judicial) on 21.12.2018. Thereafter, the counsel for the defendant filed his Vakalatnama on behalf of M/s Ganga Ram Brij Mohan through its proprietor Mr. Ankit Goel, and entered appearance on 20.02.2019, seeking an extension of time to file the written statement.

17. The defendant, that is, M/s Ganga Ram Brij Mohan, through its proprietor, Mr. Ankit Goel, filed its written statement on 13.05.2019, with a condonation of delay application, which was allowed by the learned Joint Registrar (Judicial) *vide* its Order dated 21.11.2019, and the written statement of the defendant was taken on record. It is imperative to note here that the said written statement was signed by Mr. Ankit Goel, and was accompanied by an affidavit of Mr. Ankit Goel, who claims to be the proprietor of M/s Ganga Ram Brij Mohan.



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18. In the said written statement, the defendant has *inter alia* pleaded that since the present Suit has been filed by the plaintiff against and in the name of the proprietorship concern, the Suit is not maintainable, as the proprietorship concern is not a legal entity.

19. The defendant further avers that the plaintiff has no locus to file the present Suit as the contracts referred to in the plaint were executed between the defendant and SJSS Trade Links Pvt. Ltd., who has not been made a party to the Suit. The defendant *inter alia* took objection to the plaint on the grounds of mis-joinder of causes of action, lack of territorial jurisdiction of this Court, and the plea that the Suit is barred by limitation.

20. Thereafter, the plaintiff herein moved an application, being I.A. 1953/2020 under Order VIII Rules 1 and 10 of the CPC, seeking directions to take off the record the written statement filed by Mr. Ankit Goel and for passing a Judgment against the defendant.

21. In the said application, the plaintiff asserts that the present Suit has been filed by the plaintiff against the Sole Proprietorship concern, that is, M/s Ganga Ram Brij Mohan through its Sole Proprietor Sh. Brij Mohan and as the written statement has been signed and filed by Mr. Ankit Goel, against whom no relief has been claimed as he was never made a party to the Suit, and not by Sh. Brij Mohan, therefore, the written statement filed by Mr. Ankit Goel cannot be read on behalf of Sh. Brij Mohan Goel, and hence the same should be taken off the record. The plaintiff prays for an order pronouncing Judgment against the defendant in terms of Order VIII Rule 10 of the CPC.



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22. While the above applications were pending adjudication, the defendant filed an application, being I.A. 9616/2023 under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the ground that the Suit has been filed against a proprietorship firm and not against the sole proprietor in his own name. The defendant claimed that this itself makes the subject Suit not maintainable, as a proprietorship firm is not a juristic person or a legal entity.

23. During the course of arguments on the above two applications, the defendant filed two more applications, being I.A. 37752/2024 (seeking impleadment of Mr. Ankit Goel as a defendant in the present Suit) and I.A. 37751/2024 (seeking leave of this Court to allow Mr. Brij Mohan Goel to endorse the written statement filed on behalf of M/s Ganga Ram Brij Mohan by affixing his signatures thereon and also permitting to file a separate affidavit/statement of truth adopting the stand of M/s Ganga Ram Brij Mohan as taken in the written statement).

24. These two applications came to be listed before this Court on 28.08.2024. This Court on the said date, disposed of the I.A. 37752/2024, by observing as under:

“11. The learned counsel for the applicant submits that the applicant is the proprietor of M/s Ganga Ram Brij Mohan, and therefore, should be impleaded in the Suit.

12. The learned senior counsel for the plaintiff, on the other hand, submits that the plaintiff has sued and wishes to sue only Mr. Brij Mohan Goel as a sole proprietor of M/s Ganga Ram Brij Mohan. He submits that in



case he later finds that Mr. Brij Mohan was not the proprietor of M/s Ganga Ram Brij Mohan, the Suit may fail and the plaintiff is willing to take this chance.

13. In view of the above, the application cannot be allowed. The plaintiff being the dominus litus is entitled to sue a person at his own risk and consequences.

14. It is also clarified that if at the stage of adjudication of the Suit, it is found that Mr. Brij Mohan Goel was not the proprietor of the firm M/s Ganga Ram Brij Mohan and otherwise owes no personal liability to the plaintiff, the plaintiff would fail in the Suit and consequences will follow.

15. The application is accordingly dismissed.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE DEFENDANT:

25. The learned counsel for the defendant, in support of I.A. 9616/2023, submits that M/s Ganga Ram Brij Mohan, even as per the case of the plaintiff pleaded in the Suit, is a proprietorship concern and not a juristic entity, therefore, the Suit filed in the said name is not maintainable and is liable to be rejected under Order VII Rule 11 of the CPC. In support of his submission, he places reliance on the Judgments of this Court in *P.C. Advertising v. MCD*, 1998 SCC OnLine Del 239; *Miraj Marketing Corpn. v. Vishaka Engineering*, 2004 SCC OnLine Del 1047; *Svapn Constructions v. IDPL Employees Coop. Group Housing Society Ltd.*, 2005 SCC OnLine



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Del 1392 and, *Star Hawaii Centre v. J.K Polymers*, 2023 SCC OnLine Del 7358.

26. He submits that as M/s Ganga Ram Brij Mohan is in fact the sole proprietorship of Mr.Ankit Goel, the written statement was filed on its behalf by Mr.Ankit Goel. He submits that Mr.Brij Mohan Goel is not a proprietor of any proprietorship business much less M/s Ganga Ram Brij Mohan. He submits that this is evident from the Income Tax Return, GST Registration, and the Importer and Exporter Certificate, showing Mr.Ankit Goel as the proprietor of M/s Ganga Ram Brij Mohan. He submits that even the Bank Account of M/s Ganga Ram Brij Mohan is in the name of its proprietor Mr.Ankit Goel.

27. He submits that Mr.Brij Mohan Goel is the father of Mr.Ankit Goel and both have been running the business of M/s Ganga Ram Brij Mohan, though Mr.Ankit Goel is its proprietor while Mr.Brij Mohan Goel is its Manager and is participating in the affairs of the firm on the specific authorization of Mr.Ankit Goel. He submits that the written statement, though filed under the signatures of Mr.Ankit Goel, was drafted on the joint instruction and supervision of both Mr.Ankit Goel and Mr.Brij Mohan Goel. He submits that therefore, there is only a technical defect of Mr.Brij Mohan Goel not signing the written statement as filed. He submits that in case this Court finds the present Suit to be maintainable, the written statement be permitted to be endorsed by Mr.Brij Mohan Goel by affixing his signatures thereon and permission be granted to him to file separate affidavit/statement of truth adopting the stand of the written statement already filed.



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SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PLAINTIFF:

28. On the other hand, the learned senior counsel for the plaintiff, by placing reliance on Order XXX Rule 10 of the CPC, submits that the present Suit, filed in the assumed name of the defendant- Mr.Brij Mohan Goel, that is, in the name of M/s Ganga Ram Brij Mohan, is maintainable. He submits that the Courts have even gone to the extent of holding that even where the Suit is filed by the plaintiff in the name of a proprietorship concern and not in the name of the proprietor, the same is maintainable and cannot be dismissed merely on this ground. In support of his submission, he places reliance on the Judgments of the Supreme Court in *Ashok Transport Agency v. Awadesh Kumar & Anr*, (1998) 5 SCC 567; *Rasikalal Manikchand Dhariwal & Anr. v. M.S.S. Food Products*, (2012) 2 SCC 196, and of this Court in *P.D. Verma and Co v. Laxmi Builders*, (2014) SCC OnLine Del 2160; *Sushila v. Delhi International Airport Pvt. Ltd. & Anr.*, (2022) SCC OnLine Del 3188 and, *K.S. Exports v. Ethiopian Airlines*, 2011 SCC OnLine Del 4978, and of High Court of Bombay in *Satsahib Cotton Pressing Factory v C.A. Galiakotwala and Co. Pvt. Ltd.*, 2017 SCC OnLine Bom 7783, and of High Court of Madhya Pradesh in *Ushadevi W/O Late Radheshyam Agarwal & Anr. v. Cotton Corporation of India Ltd. & Anr.*, 2019 SCC OnLine MP 6113. He also placed reliance on the Judgment of High Court of Jammu &



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Kashmir and Ladakh in *Executive Engineer, Dal Lake Division-I v. Mousvy Industries Budgam & Ors.*, 2023 SCC OnLine J&K 881.

29. He submits that in view of the Judgment of the Supreme Court in *Ashok Transport Agency* (supra) and *Rasikalal Manikchand Dhariwal* (supra), the Judgment of this Court in *P.C. Advertising* (supra) cannot be said to be laying down good law. He submits that in fact, the Judgment of this Court in *SVAPN Construction* (supra) has been set aside by the Supreme Court by way of its order dated 15.04.2010 passed in Civil Appeal No.3336/2007, titled *M/S. SVAPN Construction v. IDPL Employees Cooperative Group House Society Ltd. & Ors.*

30. He submits that as the written statement has not been filed by the defendant, that is, Mr.Brij Mohan Goel, therefore, the written statement as filed by Mr.Ankit Goel is liable to be struck off the record, and in absence of a written statement being filed, the Suit is liable to be decreed under Order VIII Rule 10 of the CPC. In support, he places reliance on the Judgment of the Supreme Court in *SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd. & Ors.*, (2019) 12 SCC 210.

31. The learned senior counsel for the plaintiff submits that Mr.Brij Mohan Goel now cannot be allowed to endorse the written statement filed by Mr.Ankit Goel, as the said written statement was not filed by Mr.Ankit Goel under any authority from Mr.Brij Mohan Goel and, in fact, Mr.Ankit Goel had sought for the dismissal of the Suit. He submits that the endorsement of the written statement at this belated stage would be barred by the provision of Order VIII Rule 10 of the



CPC as applicable to a commercial dispute under the Commercial Courts Act, 2015.

ANALYSIS AND FINDINGS:

32. I have considered the submissions made by the learned counsels for the parties.

33. From the above, it would be apparent that the first issue to be determined by this Court in these applications is whether the Suit, insofar as it impleads the defendant in the name of the proprietorship concern and not in the name of its proprietor, is maintainable.

34. To answer this issue, Order XXX Rule 10 of the CPC is relevant and is reproduced herein below:

“10. Suit against person carrying on business in name other than his own.-

Any person carrying on business in a name or style other than his own name, or Hindu Undivided Family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, insofar as the nature of such case permits, all rules under this Order shall apply accordingly.”

35. A reading of the above provision would show that a plaintiff is permitted to sue the defendant carrying on the business in a name other than his own and as if it was in a firm's name.

36. In *Ashok Transport Agency* (supra), the Supreme Court held that the provision of Order XXX Rule 10 of the CPC enables the proprietor to be sued in the business name of his proprietorship concern. The Supreme Court held that for such cases, the real party



who is being sued is the proprietor of the said business. I may quote from the judgment as under:

“6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business “insofar as the nature of such case permits”. This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case.”

(Emphasis supplied)

37. Though the above Judgment may have been sufficient to answer the issue raised in the present applications, as much submissions have



been made placing reliance on the Judgments, which were considering if the Suit filed in the name of proprietorship concern and not filed in the name of proprietor is maintainable, I may make a brief reference to these Judgments as well.

38. In ***Rasikalal Manikchand Dhariwal*** (supra), the Supreme Court after considering Order XXX Rule 10 of the CPC, held that though the said provision does not enable a person carrying on business in a name and style other than in his own name to sue in such a name or style, a plaint filed in the name of the proprietorship concern rather than in the name of the proprietor himself at best may be called to be not in a proper order. It would not be an illegality which goes to the root of the matter. I may quote from the judgment as under:

“81. Order 30 Rule 10 of the Code reads as follows:

“10. Suit against person carrying on business in name other than his own.— Any person carrying on business in a name or style other than his own name, or Hindu Undivided Family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, insofar as the nature of such case permits, all rules under this Order shall apply accordingly.”

The above provision is an enabling provision which provides that a person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. As a necessary corollary, the said provision does not enable a person carrying on business in a name or style other than in his own name to sue in such name or style.

82. The plaint filed by the plaintiff describes the title of the plaintiff as follows:



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*“Messrs M.S.S. Food Products,
Plot No. D, Sector E,
Sanver Road Industrial Area, Indore,
Through — Proprietor — Nilesh
Vadhwani,
Son of Shri Ashok Vadhwani, aged 27
years,
Occupation — Business.”*

*83. The above description of the plaintiff in the
plaint at best may be called to be not in proper
order inasmuch as the name of Nilesh
Vadhwani must have preceded the business
name in the cause-title. This is not an illegality
which goes to the root of the matter.....”*

39. In ***SVAPN Construction*** (supra), this Court had dismissed an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 on the ground that it was filed in the name of the sole proprietorship concern which is not a legal entity and therefore, is not maintainable. The Supreme Court, however, by its Order dated 15.04.2010 passed in Civil Appeal No.3336/2007, titled ***M/S. SVAPN Construction v. IDPL Employees Cooperative Group House Society Ltd. & Ors.***, set aside the Judgment of this Court by holding that the High Court had taken a hyper-technical view of the matter. It held that the law has to do substantial justice and not to go by these hyper-technicalities.

40. The same view has been taken by this Court in ***P.D. Advertising*** (supra) and ***Sushila*** (supra).

41. In ***K.S. Exports*** (supra), this Court was considering an appeal against the Judgment of the Trial Court which had dismissed the Suit simply because the plaintiff was a sole proprietorship concern, that is,



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it was not a natural person or a legal entity. Considering the issue whether the Suit of the plaintiff was not maintainable in the present form, the Court placed reliance on the Judgment of the Supreme Court in *M/s Ganesh Trading Co. v. Moji Ram*, (1978) 2 SCC 91 and held as under:

“3. The aforesaid finding has caused a great travesty of justice. Technicalities cannot defeat justice. Firstly, in my opinion, the Trial Court should have exercised its suo moto power under Order 1 Rule 10(2) CPC by which the Court can order a person to be added as a party to the suit. Infact mis-description in the name of the plaintiff can always be corrected and this is a ratio of the celebrated decision of the Supreme Court in the case titled as Ganesh Trading Co. v. Moji Ram, 1978 (2) SCC 91. The relevant paras of the said judgment read as under:-

“11. The High Court had also referred to Jai Jai Ram Manohar Lal. v. National Building Material Supply, Gurgaon [1970] 1 SCR 22 but had failed to follow the principle which was clearly laid down in that case by this Court. There, the plaintiff had instituted a suit in the name of Jai Jai Ram Manohar Lal which was the name in which the business of a firm was carried on. Later on, the plaintiff had applied to amend the plaint so that the description may be altered into “Manohar Lal Proprietor Jai Jai Ram Manohar Lal.” The plaintiff also sought to clarify paragraph 1 of the plaint so that it may be evident that “Jai Jai Ram Manohar Lal” was only the firm's name. The defendant pleaded that Manohar Lal was not the sole proprietor. One of the objections of the defendant in that case was that the suit by Manoharlal as sole owner would be time barred on 18th July, 1952, when the



amendment was sought. In that case, the High Court had taken the hyper technical view that Jai Ram Manohar Lal being “a non-existing person” the Trial Court could not allow an amendment which converted a non-existing person into a “person” in the eye of law so that the suit may not be barred by time. This Court while reversing this hypertechnical view observed:

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

42. In view of the above Judgments, it must be held that not only can the defendant be sued in the assumed name, but even where the Suit is filed in the assumed name, it would at best be a technical defect, which can be cured by the plaintiff at a later date. The Judgment of this Court in ***P.C. Advertising*** (supra) and ***Kazi Bashir Rahaman*** (supra) holding to the contrary would not be a good law in view of the Judgments of the Supreme Court referred to hereinabove.



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43. In *Miraj Marketing Corporation* (supra), the Court was considering the situation where the Suit is filed in the name of the proprietorship concern and not a case, like the present, where the defendant is arrayed in the name of the proprietorship concern and not the proprietor. As noted hereinabove, the present situation will squarely fall within the ambit and scope of Order XXX Rule 10 of the CPC and the Judgments referred to hereinabove.

44. I, therefore, find no merit in the objection of the defendant to the maintainability of the present Suit and, consequently, in I.A. 9616/2023. The same is accordingly dismissed.

45. This now brings me to the other two applications, that are, I.A. 1953/2020 and 37751/2024 filed by the plaintiff and the defendant respectively.

46. As noted hereinabove, the plaintiff by I.A. 1953/2020 pressed for the written statement filed by Mr.Ankit Goel to be struck off the record and the Judgment to be passed in absence of a written statement, while in I.A. 37751/2024, Mr.Brij Mohan Goel seeks permission to endorse the written statement filed by Mr.Ankit Goel and permission to file his own affidavit/statement of truth in support of the written statement.

47. The plaintiff has sued Mr.Brij Mohan Goel in his assumed name, that is, the name in which the plaintiff claims that Mr.Brij Mohan Goel carries on his sole proprietorship business, that is, M/s Ganga Ram Brij Mohan. The written statement was filed by Mr.Ankit Goel stating that M/s Ganga Ram Brij Mohan is in fact the sole proprietorship concern of Mr.Ankit Goel and not Mr.Brij Mohan



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Goel. Confronted with the position in law that the plaintiff in the present case would be deemed to have instituted the present Suit against Mr.Brij Mohan Goel, the defendant, that is, Mr.Brij Mohan Goel now wishes to endorse the written statement which is filed by Mr.Ankit Goel. In the present application, the defendant claims that Mr.Brij Mohan Goel is the manager of M/s Ganga Ram Brij Mohan, and the written statement was filed by his authority and under his instruction as well.

48. The learned senior counsel for the plaintiff, on the other hand, submits that this being a Commercial Suit, the time for filing of the written statement, including the maximum period by which the delay in filing of the same, having long expired, permission as sought by Mr. Brij Mohan Goel, cannot be granted. He submits that grant of such permission would amount to the defendant being allowed to file his written statement much beyond the prescribed period.

49. I have considered the submissions made by the learned counsels for the parties.

50. As noted hereinabove, the written statement was filed by Mr.Ankit Goel stating that he and not Mr. Brij Mohan Goel is the proprietor of M/s Ganga Ram Brij Mohan. He therefore, took upon himself any liability that may be fastened in case the Suit is decreed against the defendant. It must be presumed that the same was done with the authority and concurrence of his father- Mr. Brij Mohan Goel.

51. As held by the Supreme Court in a catena of judgments, procedure is the handmaid of justice and not its mistress. A party



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should not be non-suited on mere technicalities of law. Substantive rights should not be allowed to be defeated on technical grounds or procedural irregularity so as to ensure that no injustice is done to any party {Refer: *United Bank of India v. Naresh Kumar & Ors.*, (1996) 6 SCC 660; *Uma Shankar Triyar v. Ram Kalewar Prasad Singh & Anr.*, (2006) 1 SCC 75; and *Varun Pahwa v. Renu Chaudhary*, (2019) 15 SCC 628}.

52. In the present case, the written statement already stands filed *albeit* by and under the signatures of Mr. Ankit Goel. The defendant can even produce his authorization for Mr. Ankit Goel to file the written statement, which he now does in form of the present application. In my view, therefore, the defect of authorization being curable in nature, the defendant cannot be left without a defence merely on the technicalities of law.

Conclusion:

53. For the reasons stated herein above, I.A. 9616/2023 and I.A. 1953/2020 are hereby dismissed. I.A.37751/2024 is allowed, thereby, allowing Mr. Brij Mohan Goel to file fresh copies of the written statement already filed, duly endorsing the same, along with his affidavit in support of the contents thereof and the Statement of Truth. Mr. Brij Mohan Goel is also permitted to file the affidavit of admission/denial of documents filed by the plaintiff. The written statement and the affidavit of admission/denial of documents be filed within a period of two weeks from the date of this Judgment, failing which they shall not be taken on record.



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54. For the delay that has been caused in the adjudication of the Suit, due to a mistake which is solely attributable to the defendant, the defendant shall pay costs of Rs. 50,000/- (Rupees fifty thousand only) to the plaintiff within a period of two weeks, as a pre-condition for the written statement to be taken on record.

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55. List the Suit for appropriate directions before the Roster Bench on 3rd December 2024.

NAVIN CHAWLA, J.

NOVEMBER 14, 2024/Arya/VS

[Click here to check corrigendum, if any](#)