

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/32/2018

M/s. Six Dee Telecom Solutions Pvt. Ltd.

Appellant

VS.

APFC, Delhi (S)

Respondent

ORDER DATED :-05/08/2022

Present:- Shri S.P Arora & Shri Rajiv Arora, Ld. Counsel for the
appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order is to deal and dispose of an application filed by the Respondent on 3/08/2022 wherein a prayer has been made to place additional reply to the appeal for reasons mentioned in the petition. Proof of service of the petition to the appellant was filed along with the petition. Since the matter was fixed to 4th Aug for passing of the final order on the appeal, office was directed to list the matter today. Accordingly, the matter came up today for hearing on the petition filed by the respondent. Learned counsel for both the parties advanced their respective argument.

This appeal was filed in the year 2018, wherein the appellant, one among the other grounds had pleaded that the order passed by the commissioner is not sustainable for want of a clear finding on the mensrea of the establishment behind the delayed remittance. To fortify the stand appellant in the memo of appeal has relied upon the judgment of the Hon'ble SC in the case of **DCW Employees Cooperative Canteen vs. PO EPFAT and the cases of Macloed Russel India Limited vs. RPFC Jalpaiguri.**

The Hon'ble SC on 23rd February 2022 passed a judgment in the case of **Horticulture Experiment Station Gonikoppal Coorg vs. RPFC in civil Appeal no 2136/2012** holding that mensrea or actusreus is not an essential element for imposing penalty or damage for breach of civil obligation and liability. The said judgment has prompted the respondent to bring in an amendment in the reply already filed and for that purpose wants to file an amended reply which has already been placed on record along with the present petition.

During hearing the Learned Counsel for the respondent Shri Rajesh Kumar argued that amendment can be brought to the pleadings at any stage before the litigation attains finality.

Mr. Arora appearing for the appellant while agreeing to the said provision of law submitted that the amendment by way of additional reply as proposed is nothing but an attempt to delay the proceeding and also argued that the judgment of Horticulture experiment was passed prior to the final hearing of the appeal on 25/04/2022 and at that time extensive argument on the principle decided in the case of Horticulture Experiment referred supra was made. Hence there is no need for bringing in the amended and additional reply. The reply by Mr. Kumar in this regard is that all the pleas taken by a party should be embedded in it's pleading for reference and consideration of the original court/ Tribunal as well as by the higher courts.

The argument advanced by the Ld. Counsel for the respondent made it necessary to look into the appeal memo and the reply filed to the same. No doubt in the memo of appeal the appellant has relied upon the judgments of **DCW Employees Cooperative Canteen vs. PO EPFAT** and the case of **Macloed Russel India Limited vs. RPFC Jalpaiguri** to argue that finding on mensrea is sine qua non for imposition of damage and the respondent in its reply has rebutted the same citing the judgment passed by the Hon'ble Supreme Court in the case of **Organo Chemical Industries vs. Union of India** to say that imposition of damage is perfectly within the implied power and the legislature, may while enforcing collection, legitimately and reasonably provide for recovery of additional sum in shape of penalty. Thus, from the pleading it is evidently clear that the plea taken in the appeal was rebutted by the respondent.

Now coming to the judgment of Horticulture Experiment Station referred supra the said judgment was passed by the Hon'ble Supreme Court on 23rd February 2022 and the same was referred to during the argument held on 25.04.2022. The provision for amendment of pleading is permissible only when the amendment in the pleading is necessary for the purpose of determining the real question in controversy between the parties. Any law pronounced by the High Courts or Supreme Courts during the pendency of the litigation very well applies to that litigation subject to its relevancy to the facts and the stand taken by the parties. The pronouncement of any such law without being incorporated in the pleading can very well be relied upon and argued by a party who feels the same beneficial or supportive to his stand. Amendment of pleading for that purpose only is felt not necessary. The petition filed by the respondent seeking amendment of the pleading by filing additional reply on account of the judgment passed in Horticulture Experiment supra is thus held not necessary and the petition is rejected. Call on 21.09.2022 for pronouncement of the order. The respondent is at liberty of filing additional note of argument if so desired.

Presiding Officer