

119/2021

16th Feb., 2023

Present : Shri Udit Gupta, Ld.A/R for the claimant.

Shri Akhil Anand and Sh. K. K Pandey, Ld. A/Rs for the mgt.

The matter stands posted today for objection and hearing on the amendment petition filed by the applicant workman. Today, the mgt filed reply and served copy of the same on the A/R for the claimant. The Ld. A/R for the claimant expressed that he is ready to argue on the petition today. /the matter was heard on the submission made by the A/R for both the parties.

The claimant has filed this amendment petition praying amendment of the cause title of the application filed u/s 33A of the ID. Act. It has been proposed that the respondent in the application has been described as Deutsche Lufthansa AG Shared Services International India Pvt. Ltd. Novotel Pullman Hotel, Commercial Block, Aerocity, New Delhi-110037 & Ors. which is also known as Lufthansa German Airlines. The occasion for this amendment arose when the mgt in it's amendment written statement raised objection with regard to the maintainability of the proceeding on the ground that Deutsche Lufthansa AG Shared Services International India Pvt. Ltd. is a different entity than Deutsche Lufthansa AG also known as Lufthansa German Airlines. This amended w.s was filed by the management after the application for amended was allowed by the Tribunal vide order dated 14.01.2023. In order to obviate any future controversy with regard to the identity of the respondent the amendment is necessary and the same will help proper and effective adjudication of the matter.

The respondent in his reply took serious objection and submitted that the respondent is challenging the maintainability of the proceeding against Lufthansa German

Airlines. The proposed amendment in the cause title will not only negate the stand of the respondent but also change the nature of the proceeding. This amendment at the stage of the evidence if allowed would be highly prejudicial to the mgt.

Both parties advanced arguments supporting their stand taking in the application and reply.

The law is well settled that amendment to the pleading is permissible at any stage of the proceeding if the same is required in the interest of justice and for effective adjudication of the matter. The primary object for the court to allow application for amendment of pleading is to secure the ends of justice and prevent in justice to the parties. The amendment of pleading helps the parties to correct it's mistake in the pleading. The amendment is usually granted when two necessary conditions are fulfilled such as:

- i the same will not lead to injustice to the other party.
- ii. Amendment is necessary for determining the real question of controversy between the parties.

The other points which are considered for amendment of pleadings are that the amendment will avoid multiplicity of proceeding and the same intends to correct the identity of the parties wrongly described or parties omitted from being added.

In this case the management while filing written statement disputed the identity of the party against whom the applicant is seeking relief. As per their own admission Lufthansa German Airlines is different from Deutsche Lufthansa AG Shared Services International India Pvt. Ltd. The respondent also amended the written statement to incorporate the said fact. When the applicant came to know about the same, she has now filed an application to state that Deutsche Lufthansa AG Shared Services International India Pvt. Ltd. is also known as Lufthansa German Airlines. The Hon'ble Supreme

Court in the case of Vineet Kumar Vs. Mangal Sain Wadhara (1984) 3 SCC 352 have held

“ if a prayer for amendment merely adds to the facts already on record, the amendment would be allowed.”

Here is a case where the proposed amendment is on the basis of the facts pleaded by the respondent and incorporated by the amended written statement. Hence, it is held that the proposed amendment aims at effective adjudication of the matter and the same will not take the contesting respondent to surprise and not likely to cause prejudice, the amendment prayed by the applicant workman is allowed. The applicant workman is directed to file the amendment cause title on the next date of hearing which is fixed to 3rd March, 2023 of the examination of the mgt witness as fixed before the filing of the amendment application. Management is directed to produce the witness on that day positively by supplying copy of the affidavit in advance to the applicant to put her in a position to cross examine the witness on that day. It is made clear that no further adjournment for the purpose shall be allowed to the management

Presiding Officer
CGIT-II