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

Dated of Reserve: July 30, 2008
Date of Order: August 11, 2008

+ **CM(M) No.338/2007**
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David Paint Industries & Anr.

11.08.2008

...Petitioners

Through: Mr. R.K. Gupta, Advocate.

Versus

Anandsons Trade Linders

...Respondent

Through: Mr.R.K. Jain, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the order dated 31st January 2007 passed by the learned ADJ whereby an application of the defendants (the petitioners herein) under Order 6 Rule 17 for amendment of the written statement was dismissed.
2. The defendants had filed written statement initial on 3rd June 2006 thereafter issues were framed by the trial court on 13th July 2006 and the case was fixed for the plaintiff's evidence and the examination in chief of the witnesses of the plaintiff by way of affidavits were filed. The defendants made this application subsequently seeking leave to amend the written statement and to incorporate the plea that the suit was bad for misjoinder of the parties. The defendants also wanted to incorporate a plea that he was entitled to suspend the payment of the rent as the plaintiff No.2 had disconnected the electricity of the suit premises. The defendant wanted to take another plea that the license agreement executed between the parties was an interim document.
3. The only reason given by the defendants in seeking amendment of the written

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statement was that these facts could not be incorporated earlier on the ground of inadvertence and oversight.

4. Order 6 Rule 17 of the CPC reads as under:

"17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

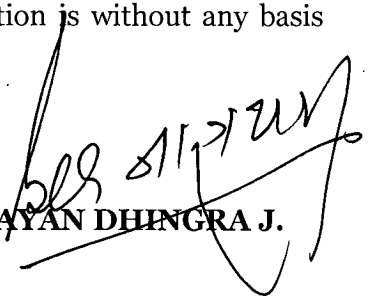
5. Proviso to Order 6 Rule 17 of the CPC makes it abundantly clear that no application for amendment is to be allowed by the court after the trial has commenced unless the Court comes to conclusion that in spite of the due diligence, the party could not have raised the matter before commencement of the trial. There can be no two views about the legal position that trial commences once the issues are framed and the matter is fixed for the evidence. Thus if an application for amendment is to be made by a party after framing of issues, the party has to satisfy the Court that the amendment sought could not be incorporated in the initial pleadings despite all due diligence and care taken by the party. Whenever an amendment is sought to be incorporated on the ground of inadvertence and oversight, the Court is bound to reject such an application because inadvertence and oversight itself are proof of non exercising of due diligence. All pleadings are required to be prepared by the parties on the basis of facts within the knowledge of the party, even those facts which are not in the knowledge of the parties are required to be dug out and collected by the parties so that complete facts are put up before Court. Thus before preparing the plaint, the plaintiff must find out all necessary facts and then file the plaint and before filing of written statement, the defendant must dig out and collect all facts necessary for his defence and place the same before the Court. Law permits the Court to allow amendment of the pleadings before framing of issues so

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that parties know each others' defence and the documents relied upon by each other. The Court has to be loath in allowing the amendment after commencement of trial. The amendment must be allowed only sparingly in those cases where despite due diligence and efforts, the parties could not have come to the knowledge of the facts which are sought to be introduced by way of an amendment. The application for amendment cannot be allowed in a routine manner.

6. In view of foregoing facts and circumstances, I find that the learned trial court has rightly dismissed the application made by petitioner. The petition is without any basis and merit and is hereby dismissed.

August 11, 2008
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SHIV NARAYAN DHINGRA J.