

UNREPORTED

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

+ FAO(OS) 284/2005 and CM Nos.13155/2007 and 1319/2007

% Date of Decision: 20th March, 2008

AJAY RAJPAL

..... Appellant

Through: Mr. Sunil Malhotra and Ms. Sonali
Malhotra, Advocates

versus

AVINASH RAJPAL & OTHERS

..... Respondents

Through: Mr. Sunil Aggarwal, Advocate for
R-1

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

% **20.03.2008**

: **DR. MUKUNDKAM SHARMA, CJ. (ORAL)**

1. We have heard the learned counsel appearing for the parties on this appeal, which is filed by the defendant No.1 (appellant herein) being aggrieved by the order passed by the learned Single Judge in dismissing his application seeking for amendment of the written statement. The suit was instituted by the respondent No.1. Written statement in the said suit was filed by the defendant No.1 on 10th February, 2003. Issues in the suit were framed on 31st August,

2004. The learned Single Judge thereafter passed an order that the evidence in the suit shall be recorded by a local commissioner who was appointed. An affidavit by way of evidence was also filed by the respondent-plaintiff on 23rd October, 2004. After the aforesaid affidavit by way of evidence was filed, an application was filed by the appellant praying for amendment of his written statement. The said application was dated 25th January, 2005. The application was contested by the respondent contending, inter alia, that since the trial has commenced, no such application seeking for amendment of the written statement could be entertained at that stage. The aforesaid contention of the counsel appearing for the respondent found favour with the learned Single Judge, who passed the impugned order dismissing the application for amendment filed by the defendant No.1 (appellant herein).

2. Being aggrieved by the said order, the present appeal is filed on which we have heard the learned counsel appearing for the parties. There is no denial of the fact that on the day when the said application seeking for amendment of the written statement was filed by the defendant No.1, the trial had commenced, inasmuch as the plaintiff's affidavit by way of evidence was directed to be filed and was in fact filed. However, the amendment which was sought for was to the following effect:

***"AMENDED PARA NO.2 OF PRELIMINARY OBJECTIONS
OF WRITTEN STATEMENT:***

That the property bearing No.1486, Chandni Chowk,

Delhi was purchased by the firm M/s Music Mahal in the year 1984. The entire consideration amount for the purchase of this property was paid by the firm M/s Music Mahal to the vendor of the property and the consideration amount of Rs.48,000/- was paid by eight bank drafts bearing No.035177, 035178, 035179, 035180, 035181, 035182, 035183 and 035184, dated 12.10.1984, all drawn on Union Bank of India, Connaught Place Branch, New Delhi. All these bank drafts were made from the account of M/s Music Mahal and the entire consideration amount was paid by M/s Music Mahal to the person from whom the property was purchased by M/s Music Mahal. This firm M/s Music Mahal consisted of four partners, namely, (i) Smt. Sumedha Devi, W/o Shri Bhagwan Dass, (ii) Smt. Krishna Devi, W/o Shri Ramesh Nagpal, (iii) Shri Avinash Rajpal, S/o Shri Bhagwan Dass, (iv) Shri Ajay Rajpal, defendant no.1. Right from the year 1984, this property bearing no.1486, Chandni Chowk, Delhi has been shown to be owned by M/s Music Mahal by all these partners in the accounts books and in the returns filed with the Income Tax Department. The Balance Sheet of M/s Music Mahal was signed by all the four partners admitting and acknowledging the fact that this property No.1486, Chandni Chowk, Delhi is owned by M/s Music Mahal and the property belongs to M/s Music Mahal."

3. In the original written statement, paragraph 2 was stated thus:

"2. That the property bearing No.1486, Chandni Chowk, Delhi, was purchased by the firm M/s Music Mahal in the year 1982. The entire consideration amount for the purchase of the property was paid by the firm M/s Music Mahal. This firm M/s Music Mahal consisted of four partners, namely, (i) Smt. Sumedha Devi, W/o Shri Bhagwan Dass, (ii) Smt. Krishna Devi, W/o Shri Ramesh Rajpal, (iii) Shri Avinash Rajpal, S/o Shri Bhagwan Dass, (iv) Shri Ajay Rajpal, defendant no.1. Right from the year. Right from the year 1982, this property bearing no.1486, Chandni Chowk, Delhi has been shown to be owned by M/s Music Mahal by all these partners in the accounts books and in the returns filed with the Income Tax Department. The Balance Sheet of the firm M/s Music Mahal was signed by all the four

partners admitting and acknowledging the fact that this property bearing No.1486, Chandni Chowk, Delhi is owned by the firm M/s Music Mahal and the property belongs to M/s Music Mahal."

4. A comparative reading of both the paragraphs would show that what was sought to be included by the appellant-defendant by way of amendment was the giving of better particulars by way of elucidation of facts already existing in paragraph 2. These particulars, in our considered opinion, could be brought on record even by way of evidence, inasmuch as it is well settled law by now that the entire evidence may not be set out in the pleadings of the parties. What is required to be stated in the pleadings of the parties are the material facts and not material particulars which are part of the proof and could be adduced at the time of trial. On going through the records, we are of the considered opinion that the statements which were sought to be incorporated by way of amendment of paragraph 2 of the written statement are, in fact, material particulars which could be even otherwise brought on record by adducing evidence. Counsel appearing for the respondent also states that such evidence, which is stated in paragraph 2, could be adduced at the time of evidence.

5. In that view of the matter, we dispose of this appeal observing that whatever is stated by way of amendment could be allowed to be adduced through evidence at the time of trial and that the respondent would have no objection to the adducing of the same at the time of trial. The suit is already delayed by a

number of years and, therefore, we are of the considered opinion that the suit should be heard giving priority to the same, as expeditiously as possible. The parties shall now appear before the learned Single Judge on 9th April, 2008 when further dates in the trial shall be fixed. The hearing of the suit shall be expedited and the same shall be completed as expeditiously as possible. The prayer for holding the trial on day-to-day basis could also be considered by the learned Single Judge. However, so far the costs awarded by the learned Single Judge are concerned, the same stand quashed.

CM Nos.13155/2007 and 1319/2007 stand disposed of accordingly.

CHIEF JUSTICE

REVA KHETRAPAL, J

MARCH 20, 2008
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