

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

+ **FAO(OS) 256/2009 & CMs 8721-23/2009**

Reserved on: July 7, 2009.

% Pronounced on: July 17, 2009.

NEENA KHANNA & ANR. Appellant
Through Mr.A.S.Chandhiok, Sr.Advocate with Mr.
Shine Joy & Ms. Urvashi Basak, Advocates.

versus

PEEPEE PUBLISHERS & DISTRIBUTORS PVT LTD..... Respondent
Through Mr. Jagdish Sagar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE V.K. JAIN

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? yes**
- 2. To be referred to the Reporter or not? yes**
- 3. Whether the Judgment should be reported in the Digest? yes**

V.K.Jain, J.

This is an Appeal against the Order dated 8.5.2009, whereby the learned Single Judge allowed application of the Plaintiff/Respondent under Order VI Rule 17 of Code of Civil Procedure, for amendment of Plaintiff.

2. The case set up by the Plaintiff/Respondent No.1 in the original Plaintiff is that the Appellant/Defendant No.1, who is a Professor of Dermatology and Venereology in All India Institute of Medical Sciences, **FAO(OS) 256/2009**

is the author of the book titled 'Synopsis of Dermatology and Sexually Transmitted Diseases', which was published by it in the year 2005, followed by re-prints in the year 2006 and 2007. Before publishing the book, the Plaintiff/Respondent No.1 entered into an agreement with the Appellant/Defendant No.1 whereby copyrights relating to publishing of the book were assigned to the plaintiff/respondent No.1. It is alleged that vide letter dated 28.3.2007, the Appellant/Defendant No.1 withdrew publishing right from the Plaintiff/Respondent No.1, despite earlier assignment of copyright to it. The Plaintiff sought injunction against the Appellant/Defendant No.1 entering into Agreement which would take away its copyright in the book, and injunction restraining defendant No.2/respondent No.2 from publishing the said book. It also sought damages amounting to Rs.20,01,000/-, besides seeking order for accounts and delivery up for any infringing copies of the said book and all materials involved in infringing such as drawings, papers, print-outs, labels etc.

3. The Appellant/Defendant No.1 filed Written Statement contesting the Suit. It was alleged in the Written Statement that since the Appellant/Defendant No.1 was not satisfied with the Plaintiff/Respondent No.1, she decided against any further publication of her works by it and withdrew the subject work from it, with effect from 1.4.2007, thereby, terminating the agreement dated 25.8.2003. Following the said withdrawal, the Appellant/Defendant No.1 assigned all copyrights in the said book to Defendant No.2, which published a second edition of the work on 8.10.2007, after announcing its publication, in

advance, on 1.10.2007. According to the Appellant/Defendant No.1, the Plaintiff/Respondent No.1 was left only with the limited right to sell the unsold stock as on 31.3.2007. Thus, according to her, no copyright in the book in question vests in the Plaintiff/Respondent No.1.

4. Vide application dated 8.4.2008, under Order VI Rule 17 of Code of Civil Procedure, the Plaintiff claimed that when the book was under preparation for its first publication, it had supplied a number of line drawings, which were utilized in the book by the Appellant/Defendant No.1. Those drawings were prepared on Plaintiff's computers, by its employee Mr.Avdesh Kumar Maurya, and the Plaintiff/Respondent No.1 is the first owner of copyrights therein, under Section 17 of the Copyright Act. According to Plaintiff, it did not mention this fact in the original Plaint since it took it for granted that those drawings would not be re-utilized in the new edition of the book, and the Author in any case was expected to make some changes in the illustrations in the second edition of the book. However, when the Plaintiff inspected the book in detail, after it was filed along with the Written Statement, it found that the Appellant/Defendant No.1 had retained/re-utilized the illustrations which were supplied by the Respondent/Plaintiff, and in respect of which copyrights were vested with it. The Plaintiff, therefore, sought amendment of the Plaint. Though the proposed amendments were not specified in the application, the proposed Amended Plaint annexed to the amendment application showed that it was seeking to add paragraphs 2(A) to 2(E) and 12(A) to 12 (E) in the Plaint. In nutshell, the Plaintiff sought to allege, by way of proposed **FAO(OS) 256/2009**

amendment, that it had got prepared and provided drawings, which were prepared on its Computer and those drawings were utilized for illustrations used in the book. The Plaintiff further pleaded that the Appellant/Defendant No.1 acquired no right or interest in the drawings provided to her. The Plaintiff also sought to plead that the infringement of these drawings came to its knowledge after the second edition of the book was published and these drawings were found used therein.

5. The first question which comes up for consideration is as to whether an Appeal is maintainable against an Order allowing amendment of the nature permitted to the Plaintiff/Respondent No.1.

6. Section 104 and Order XLIII of Code of Civil Procedure deal with Appeals against Orders. The controversy as to whether Section 104 and Order XLIII of Code of Civil Procedure apply to the Order passed by a Single Judge of the High Court or not, was set at rest by the Hon'ble Supreme Court in **Shah Babulal Khimji vs. Jayaben**, *AIR 1981 SC 1786*. The Appellant before the Hon'ble Supreme Court contended that Letters Patent being a Special Law, it overrides the provisions of the Code of Civil Procedure, the powers under Section 104 read with Order XLIII Rule 1 were in no way inconsistent with clause 15 of Letters Patent and Section 104 merely provides a new remedy and confers a new jurisdiction on the High Court. It further contended that even if Order XLIII did not apply in terms, the Order being appealable to a larger Bench could give valuable guidelines to the Court in concluding that such Orders amount to judgment as contemplated by the Letters Patent. On the other hand, the Respondents before the Hon'ble Supreme Court **FAO(OS) 256/2009**

contended that Section 104 read with Order XLIII Rule 1 could not apply to the original trial by the Trial Judge which is governed by the Letters Patent alone and Section 104 had no application to the interim appeals within the High Court. It was further contended by the Respondents that the word 'Judgment' should be strictly construed to include only those Orders of the Trial Judge which are of a final nature and effectively decide the controversy of the issue in dispute.

After reviewing the case law on the subject, the Hon'ble Supreme Court held that Section 104, read with Order XLIII Rule 1 of the Code of Civil Procedure, applies to the proceedings before the Trial Judge of the High Court and Order XLIII Rule 1 does not in any way abridge, interfere with or curb the powers, conferred on the Trial Judge by clause 15 of the Letters Patent. It further held that Section 104 read with Order XLIII Rule 1 merely gives an additional remedy by way of an appeal from the Order of the Trial Judge to a larger Bench. The Hon'ble Supreme Court agreed that the Orders indicated in various clauses of Order XLIII Rule 1 possess the attributes and the incidents of a final Order, which conclusively decides a particular issue so far as the trial court was concerned and, therefore, there could be no difficulty, even without applying Order XLIII Rule 1, to hold, by a process of analogical reasoning that the Appeals and Orders mentioned in various sub-clauses would amount to Judgment within the meaning of clause 15 of the Letters Patent, because they contain the traits, trappings and characteristics of a final Order.

7. Section 10(1) of Delhi High Court Act provides an Appeal

from the Judgment of this Court to the Division Bench of the Court. In case, it is found that the impugned Order is 'judgment' within the meaning of Section 10(1) of Delhi High Court Act, Appeal is maintainable. The test to determine whether an Order will amount to a judgment or not were also laid down by the Hon'ble Supreme Court in the case of ***Shah Babulal Khimji (supra)***.

The Hon'ble Supreme Court inter alia concluded as under:

"113. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-sec. (2) of Section 2 cannot be physically imported into the definition of the word 'judgment' as used in Cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the term 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgement' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:-

- (1) A final judgement- A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.*
- (2) A preliminary judgment – This kind of a judgment may take two forms – (a) where the trial Judge by an order dismisses the suit*

without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the trial Judge is concerned and, therefore, appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g. bar of jurisdiction, res judicata, a manifest defect in the suit absence of notice under Sec. 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

- (3) *Intermediary or interlocutory judgment – Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us in the judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not corrected by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the trial Judge in a suit*

under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge would not amount to a judgment within the meaning of clause 15 of the Letters Patent but will be purely an interlocutory order.

Similarly, suppose the trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of O. 43, R. 1 though an order rejecting an application to set aside the decree passed ex parte falls within Order 43, Rule 1, clause (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench.

114. *In the course of the trial, the trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents after the first date of hearing, an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the trial Judge.*

115. *Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.*

116. *We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the Letters Patent. Suppose the Trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though*

interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the Letters Patent. This is what was held by this Court in Shanti Kumar's case (supra), as discussed above.

117. Let us take another instance of a similar order which may not amount to a judgment. Suppose the Trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by plaintiff at the trial. In such cases, the order of the Trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of Clause 15 of the Letters Patent

118. The various instances given by us would constitute sufficient guidelines to determine whether or not an order passed by the Trial Judge is a judgment within the meaning of the Letters Patent. We must however hasten to add that instances given by us are illustrative and not exhaustive.

119. Apart from the tests laid down by Sir White, C.J., the following considerations must prevail with the court:

(1) That the Trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the Trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge. The courts must

give sufficient allowance to the Trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind.

120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the Trial Judge amounts to a judgment within the meaning of the Letters Patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, Code of Civil Procedure.

(4) An order rescinding leave of the Trial Judge granted by him under Clause 12 of the Letters Patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under

Section [80](#), bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section [92](#) of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under Section [10](#) of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff.

121. Here, it may be noted that whereas an order deciding the nature of the court fees to be paid by the plaintiff would be a judgment but this order affects only the plaintiff or the Government and not the defendant. Thus, only the plaintiff or the Government as the case may be will have the right to file an appeal in the Division Bench and not the defendant because the question of payment of court fees is a matter between the Government and the plaintiff and the defendant has no locus in this regard.

122. We have by way of sample laid down various illustrative examples of an order which may amount to judgment but it is not possible to give such an exhaustive list as may cover all possible cases. Law with its dynamism, pragmatism and vastness is such a large ocean that it is well-nigh impossible for us to envisage or provide for every possible contingency or situation so as to evolve a device or frame an exhaustive formula or strategy to confine and incarcerate the same in a straitjacket.

8. In Shanti Kumar R. Canji Versus The Home Insurance Co. Of New York, AIR 1974 Supreme Court 1719 while considering whether an order on an application for amendment would constitute judgement or not, the Hon'ble Supreme Court held as under :

"If an amendment merely allows the plaintiff to state a new cause of action or to ask a new relief or to include a new ground of relief all that happens is that it is possible for the plaintiff to raise further contentions in the suit, but it is not decided whether the contentions are right. Such an amendment does nothing more than regulate the procedure applicable to the suit. It does not decide any question which touches the merits of the controversy between the parties. Where, on the other hand, an amendment takes away from the defendant the defence of immunity from any liability by reason of limitation, it is a judgment within the meaning of Clause 15 of the Letters Patent. The reason why it becomes a judgment is that it is a decision affecting the merits of the question between the parties by determining the right or liability based on limitation. It is the final decision as far as the trial court is concerned.

19. In finding out whether the order is a judgment within the meaning of Clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the court. The nature of the order will have

to be examined in order to ascertain whether there has been a determination of any right or liability.”

9. In our view, the amendment allowed by the learned Single Judge does not , in any manner, take away or abridge any vested right of the Appellant/Defendant No.1. It does not change either nature of the suit or the cause of action on which it is based. It does not even amount to claiming a new or additional relief. The subject matter of the suit is a book on Dermatology, written by the Appellant/Defendant No.1. The cause of action for filing the suit was a letter sent by the Appellant/Defendant No.1 to the Plaintiff/Respondent No.1 withdrawing publishing right of the book from the Plaintiff/Respondent No.1, despite alleged assignment of such rights in its favour and the threatened publication of the second edition by Defendant No.2. The cause of action is not substituted on account of the amendment allowed by the learned Single Judge. The suit filed by the Plaintiff/Respondent No.1 continues to be the suit for injunction, accounts and delivery up. At best, it gives an additional ground to the Plaintiff/Respondent No.1 to claim copyright in the drawings used for illustrations given in the second edition of the book, against the Appellant/Defendant No.1 on the ground that though the authorship of the book as such vested in the Appellant/Respondent No.1, the drawings used for the purpose of the illustrations having been prepared by his employees, the authorship and consequently copyright in them in any case vests in it and not in the Appellant/Defendant No.1. In paragraph 117 of the Judgment, in case of ***Shah Babulal Khimji***

(supra), the Hon'ble Supreme Court held that if the Trial Judge allows the Plaintiff to amend the Pleat by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation, and does not work serious injustice to the Defendant, who would have ample opportunity to disprove the amended plea taken by the Plaintiff at the trial, such order would only be a simple interlocutory order and would, therefore, not be a judgment within the meaning of clause 15 of the Letters Patent. The amendment allowed by the learned Single Judge is far less significant than the amendment envisaged in paragraph 117 of the judgment of the Hon'ble Supreme Court, Here, no relief has been added and there seems to be no inconsistency in the stand taken by the Plaintiff. The suit is at a very initial stage. The Appellant/Defendant No.1 would have opportunity to controvert the plea taken by way of amendment. The Plaintiff would be required to prove, during trial, that drawings in question were prepared by its employee and the Appellant/Defendant No.1 would have opportunity to rebut the claim of the Plaintiff/Respondent No.1 in this regard by leading appropriate evidence.

10. It was contended by the learned counsel for the Appellant/Defendant No.1 that since the original pleat contains an admission on the part of the Plaintiff that the Appellant/Defendant No.1 was the author of the book; it would amount to withdrawal of this admission, if the Plaintiff is now allowed to plead that the authorship of the drawing vested in it and not in the Appellant/Defendant No.1. We are unable to accept the contention. As rightly submitted by the learned

counsel for the Plaintiff/Respondent No.1, a book may contain material(s) copyright in which may not necessarily vest in author of the book. Such material may include photographs, drawings, sketches etc. Despite such material being included in the book, the person who writes the book is referred as author of the 'book' and normally one would not say that he or she, is author of the 'book excluding the material, copyright in which vests in someone else'. Therefore, saying that the Appellant/Defendant No.1 was author of the 'book' does not necessarily mean that she is also copyright holder of each and every material contained in the book. In a given case, the copyright of each and every material contained in the book may vest in the author of the 'book' but in another case, the book may contain some material, copyright in which may vest in someone other than the author of the book. But, in both the cases, in common parlance, the person who has written the book would be referred as its author though legally, copyrights of the borrowed material may not vest in him. In our view, the amendment allowed by the learned Single Judge at best gives an additional ground to the Plaintiff/Respondent No.1 to claim publishing rights in the book and this additional ground is not inconsistent with the other grounds taken by him, that is, alleged assignment of rights in its favour.

11. It is settled proposition of law that an amendment should generally be allowed, unless it is shown that permitting the amendment would be unjust and would result in prejudice to the opposite party which cannot be compensated by cost or would deprive him of a right which has accrued to him with the lapse of time. Errors or mistakes, if not

fraudulent, should not be made a ground for rejecting the application for amendment of plaint or Written Statement. Therefore, even if the Plaintiff/Respondent No.1 committed an error by not pleading, at the very first stage, that the copyright in the drawings used for illustrations vested in it, that by itself cannot be a ground for rejecting the amendment, particularly, when the case is at a very initial stage. If there is no undue delay, no inconsistent cause of action is introduced and no vested interest or accrued legal right is affected and the application for amendment is not *mala fide* or will not prejudice the opposite party, the amendment should ordinarily be allowed.

12. It was pointed out by the learned counsel for the Appellant that as per local amendment made in the State of Punjab and Haryana, which is also applicable to Delhi, Sub-Rule (2) has been added in Rule 17 of Order 6, to provide that the every application for amendment shall state the specific amendments which are sought to be made, indicating the words or paragraphs to be added, omitted from or altered or substituted in or added to the original pleadings. The said requirement has been totally overlooked in this case, as the application for amendment did not contain the precise amendments sought to be made. No doubt, the Plaintiff/Respondent No.1 ought to have specified the proposed amendment in the application itself. But we have to keep in mind, that the objective behind requiring the applicant to specify the proposed amendment in the application, is to enable the opposite party, as well as the Court to know what precisely is sought to be added, omitted or substituted and when the proposed amended Plaint is filed

along with the application, the opposite party as well as the Court are in a position to know what precisely the proposed amendments are. Therefore, we would not be justified in refusing the amendment on this ground alone, particularly, when it has already been allowed by the learned Single Judge. We would like to point out that in **Gurdial Singh And Others versus Raj Kumar Aneja and Others**, (2002) 2 SCC 445, wherein requirement of this Rule was emphasized by the Hon'ble Supreme Court, the matter was left by the Hon'ble Supreme Court at bringing the Rule to the notice of the Courts in Punjab and Haryana and Chandigarh for being followed in letter and spirit and the Hon'ble Supreme Court did not say that no amendment can be allowed if the application does not strictly confirm to the requirement of the Rule even if proposed plaint is filed along with the application for amendment. We would also like to add that the amendment referred above, in the Rule was made before amendment of Rule 17 of Order 6 of the Code of Civil Procedure with effect from 1.7.2002. We would also like to add that the above referred amendment in Punjab and Haryana and Chandigarh was made with effect from 1.11.1966 whereas Delhi High Court came to be established on 31.10.1966, and this is not the case of the Appellant that it was adopted by Delhi High Court on or after 1.11.1966.

13. Learned counsel for the Appellant has referred to **Jai Prakash Goel And Others** versus **O.P.Goel & Ors.** 129 (2006) DLT 437. In that case, an Appeal was preferred against the Order of the learned Single Judge appointing Guardian *ad litum* for Respondent No.3 on account of his mental infirmity. It was held by a Division Bench of this **FAO(OS) 256/2009**

Court that the impugned Order did not amount to 'judgment' within the meaning of Section 10(1) of Delhi High Court Act. This judgment is of no help to the Appellant. The learned counsel for the Appellant has also referred to ***Abdul Hamim and Others versus Charanjit Mehra and Others***, 16(1995) DLT 847 where the learned Single Judge allowed amendment of Written Statement so as to incorporate a new plea whereby ouster of the jurisdiction of the Court was to be sought. Amendment allowed in that case permitted the defendant to set up a new case which affected a valuable right, vested in the Plaintiff, to rely upon an admission made in the Written Statement that the tenancy was a single tenancy to which the Rent Control Act did not apply. As a result of the amendment, the Defendant could withdraw that admission and could plead eight separate tenancies and that would have taken away the right of the Civil Court to evict the defendants. The suit was originally filed by a landlord against an ex-tenant and the nature of the suit had changed, because of the amendment, as a suit against persons claiming to be protected tenants under a current statutory tenancy. But for the amendment, Respondents could not have been able to lead evidence of eight separate tenancies. In these circumstances, it was held that the amendment had permitted addition of a new case and had affected valuable rights which had accrued to the plaintiff, on the date of the suit, to seek evictions of the Respondents on the basis of their admission and through the Civil Court. The facts of the present case are quite different and the amendment allowed by the learned Single Judge does not have the effect of allowing the Plaintiff to take away any vested right accruing

to the Appellant/Defendant No.1.

14. There is yet another reason, we would not like to interfere with the impugned order. The order allowing amendment is a discretionary order. As held by the Hon'ble Supreme Court in ***WANDER LTD. AND ANTOHER VS. ANTOX INDIA PRIVATE LTD, 1990 (Suppl.) SCC 727***, in Appeals before the Division Bench, against the exercise of discretion by the Single Judge, the Appellate Court will not interfere with the exercise of discretion of the Court in the first instance, and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law. The view taken by the learned Single Judge, in allowing the amendment cannot be said to be arbitrary or perverse or taken in ignorance of settled law. Therefore, we should not upset the view taken by him.

15. For the reasons given above, we find no ground to interfere with the impugned order. The Appeal is hereby dismissed.

V.K. JAIN, J

VIKRAMAJIT SEN,J

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