

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

+ **C.M.(M) NO.759/2009**

Date of Decision : AUGUST 07, 2009

VED PRAKASH & ANR. Petitioners
Through: Mr. Ram Niwas, Advocate

versus

OM PRAKASH JAIN Respondent
Through: NEMO.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

% **JUDGMENT (Oral)**

VIPIN SANGHI, J.

C.M. Appl. No.10803/2009

Allowed, subject to all just exceptions.

CM(M) 759/2009 & C.M. Appl. No.10802/2009

1. In challenge in this petition under Article 227 of the Constitution of India is the order dated 06.06.2009 passed by Sh. Raghubir Singh, ARC (E) in eviction petition bearing E-788/06. The said eviction petition has been preferred by the respondent-landlord under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 and the petitioner-tenant is the respondent in the said eviction

petition.

2. The petitioner-tenant filed the application seeking leave to defend within the period of limitation. Subsequently, the petitioner moved an application seeking amendment of the application for leave to defend, on the ground of the petitioner coming to know of certain subsequent developments having a bearing on the eviction petition. The application has been rejected by the learned ARC on the ground that the summary procedure evolved to try petitions under Section 14(1)(e) under the Delhi Rent Control Act does not provide for amendment of the application seeking leave to defend, which has to be preferred within a period of 15 days of the service of the notice.

3. In my view, the interpretation given by the learned ARC is not entirely correct. It cannot be said that no amendment in the application seeking leave to defend can be granted under any circumstance. If there are subsequent developments which have taken place, and which may have a bearing on the outcome of the eviction petition, the amendment can be allowed in a given case. This is for the reason that subsequent developments cannot possibly be pleaded in the application seeking leave to defend, when it is originally filed. But before allowing an amendment application which seeks to incorporate material subsequent developments, the Court would also examine whether the same has been filed with equal expedition with which the original application seeking leave to defend is required to be filed. If the application seeking the amendment is filed much after the subsequent developments have taken place, the Court would be

justified in rejecting the same as being barred by delay and laches. The tenant should act with the same sense of urgency for moving the amendment application, with which he is required to move the application seeking leave to defend, as the Delhi Rent Control Act, 1958 prescribes a summary procedure, and delay in moving the application is bound to defeat the purpose of prescribing a summary procedure i.e. to have expeditious disposal of the eviction petition. However, amendments to incorporate pre-existing facts, which are not incorporated in the application seeking leave to defend may not be allowed, as the limitation for preferring the application seeking leave to defend is only 15 days from the date of service of the notice.

4. In the present case, though the amendments sought by the petitioner pertained to developments which have taken place subsequent to the filing of the application seeking leave to defend, the application has been filed highly belatedly. The amendment application was filed only on or about 06.02.2009, whereas the "subsequent development" sought to be incorporated are of much earlier period. On this short ground the application of the petitioner was liable to be rejected.

5. In any event, considering the fact that the eviction petition is pending since November, 2006 I have examined the amendment application to appreciate whether it is at all necessary to permit the amendment sought by the petitioner. With a view to appreciate as to what was the amendment sought for by the petitioner, I have perused the application seeking amendment.

6. There were three amendments which were sought to be incorporated by the petitioner in respect of three different properties. The first amendment which was sought to be incorporated was in respect of property bearing No.513, Chhatta Hinga Mal, Chhota Bazar, Shahdara, Delhi. It was sought to be contended that after the filing of the eviction petition, construction of four rooms, a kitchen, latrine and bath and similar accommodation on the first floor have been raised in the said property. It was also sought to be contended that the existing portions of the property have been renovated.

7. This averment sought to be incorporated is, in any event, irrelevant, as it was pleaded by the respondent-landlord in the eviction petition itself that property bearing No.513, Chhatta Hinga Mal, Chhota Bazar, Shahdara, Delhi is owned by the sons of the petitioner Umesh Jain and Rajeev Jain and not by the petitioner. The incorporation of these facts could, therefore, have no bearing on the bonafide requirement of the petitioner himself. Moreover, this construction could not have taken place overnight. The petitioner ought to have raised the issue, if at all, when the construction was actually raised, and not belatedly.

8. The second amendment sought for by the petitioner was in respect of property bearing No.514, Chhatta Hinga Mal, Chhota Bazar, Shahdara, Delhi, and it was sought to be contended that during the pendency of the petition the petitioner had sold the said property vide sale deed registered on 19.09.2008. From the reply filed by the petitioner it is seen that in respect of the said property the landlord

had already filed on record photographs along with negatives to show that the suit property was in a unsafe and dilapidated condition, unfit for human habitation and beyond repairs. The occupants/tenants in the said property had vacated the premises on account of its said condition, except one tenant who was occupying one room and one verandah on the ground floor. The respondent had already taken the stand on the record that the said building was more than 100 years old and had been built by using small size bricks. The property was in a dangerous condition and, consequently, was sold by the respondent in September, 2008. This being the position already stated on record, in my view, the amendment sought to be incorporated was frivolous and the same had been sought only for the purpose of delaying and embarrassing the proceedings before the learned ARC. The petitioner has not produced before this Court the photographs filed by the respondent in respect of property No.514, Chhatta Hinga Mal, Chhota Bazar, Shahdara, Delhi, which had been filed by the respondent to show the condition of the said property as Annexure 'F'. I am, therefore, inclined to draw an adverse inference against the petitioner that the photographs, if produced, would have demonstrated the dangerous condition of the said property. Even if this amendment were to be allowed, from the reply the landlord/respondent it is clear that it would have no bearing on the question of the respondent's bonafide requirement. Moreover, from the dates given above, it is evident that this amendment could have been incorporated in the year 2008 itself, when this property was sold and it was highly belatedly that the petitioner sought the amendment.

9. So far as the third property bearing No.484/6A/2, Shalimar Park, Bhola Nath Nagar, Shahdara, Delhi is concerned, the petitioner had sought to contend that the said property had devolved upon the respondent landlord. The respondent in his response has stated that, in response to another application moved in February, 2007 (by the petitioner herein), he had already taken the stand that he had no concern with the said property. By virtue of a will dated 15.07.1996 left by its owner Sh. Sheetal Prasad Jain, the said property had devolved upon Sh. Deepak Kumar, who is the son of the daughter of Sh. Sheetal Prasad Jain and in that property Sh. Deepak Kumar had been living along with his family since before the death of Sh. Sheetal Prasad Jain. The respondent-landlord had also filed a copy of the Will dated 15.07.1996 as Annexure-G in his reply to the said application filed by the petitioner herein in February 2007. The petitioner has not produced his earlier filed application (of February, 2007) and the reply filed by the respondent to that application, much less Annexure-G to the said reply and, therefore, I am inclined to draw an adverse inference against the petitioner in respect of the said document/will as well. From the above narration it is evident that this amendment was also sought highly belatedly, and therefore, could not have been permitted.

10. It is well-settled that an amendment of a pleading cannot be permitted, which may be unnecessary, scandalous, frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise an abuse of the process of the

Court. This is so because under Order 6 Rule 16 CPC such pleadings, even if pleaded at the original stage, are bound to be struck out. What cannot be permitted to remain on record by virtue of Order 6 Rule 16 CPC, certainly cannot be sought to be incorporated by resort to Order 6 Rule 17 CPC.

11. From the impugned order it is seen that the application for amendment had been moved on 06.02.2009 though the eviction petition has been pending since 29.11.2006. The amendments sought to be incorporated were of no relevance to the eviction petition. I am, therefore, inclined to dismiss this petition with a direction to the learned ARC to proceed to dispose off the eviction petition expeditiously and without granting any unnecessary adjournments to the parties. Ordered accordingly.

VIPIN SANGHI, J.

AUGUST 07, 2009
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