

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

Date of Reserve: 3rd February, 2010
Date of Order: 9th March, 2010

CM (M) No. 474/2009

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09.03.2010

Pearey Lal Workshop Pvt. Ltd.

... Petitioner

Through: Mr. Amit S.Chadha, Sr. Advocate with
Mr. Ajit Dayal, Advocate

Versus

Raghunandan Saran Ashok Saran (HUF)

... Respondent

Through: Mr. Ashok Saran, Respondent-in-person

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By the present petition, the petitioner has assailed order dated 27th April, 2009 of the trial Court dismissing an application under Order 6 Rule 17 CPC filed by the petitioner for amendment of the WS. The learned trial Court observed that the application was not filed bona fide and was an effort to delay the proceedings. He also found that the application did not state something new and the existing WS contained the necessary facts. He dismissed the application on this ground as well as on ground that the application was filed after commencement of the trial.

2. A perusal of record would show that the petitioner filed WS in the year 2002 and first amendment application was filed on 2nd August, 2006. The first application was withdrawn by the petitioner on 24th February, 2009. The petitioner moved second amendment application on 11th January, 2007 seeking to add certain paragraphs (paras 5A to 5D) in the WS.

3. The petitioner by way of amendment wanted to take plea that the suit was barred by Section 50 of the DRC Act and the notice served by the respondent on the petitioner was invalid as it did not satisfy the requirement of Section 106 of the Transfer of Properties Act. It is submitted by the petitioner that by way of

amendment it wanted to elaborately state how the notice was not meeting the requirement of Section 106 by spelling the provisions of Section 106.

4. Order 6 of CPC defines pleadings. Order 6 Rule 2 specifically states that every pleading shall contain and contain only, a statement in a concise form, of the material facts relied upon by a party in support of his claim or defence and the pleading shall not contain evidence by which those facts are to be proved. It is also settled law that pleadings need not contain detailed propositions of law and pleading cannot contain argumentative paragraphs. It is observed that in most of the pleadings, the basic principle as enunciated in Order 6 Rule 2 CPC are not followed and there is a tendency of filing prolix pleadings in the Court, which instead of containing concise statement of facts contain argumentative and evidentiary paragraphs.

5. In the present case, the petitioner had already taken objection about the validity of notice in terms of Section 106. By way of amendment he wanted to introduce several more paragraphs to show how the notice was not a valid notice, these paragraphs were argumentative in nature. The petitioner had already taken objection regarding maintainability of suit before the Court, he wanted to add more paragraphs in this respect in view of judgment of the Supreme Court between the parties in a connected petition. It is apparent that the sole purpose of the petitioner was to delay the proceedings.

6. It is argued by the learned Counsel for the petitioner that the law relating to amendment is liberal and the Supreme Court has observed that the yardstick to be applied for amendment of plaint is not the same which is to be applied for amendment of the WS. Whatever be the yardstick for amendment of WS or plaint, the frivolous amendments which are sought to be introduced by way of amendment applications just to delay must be curbed with heavy hand. This Court in *Delton Cables v. Kishore Kumar* CM(M) No. 919/2003 decided on 24th February, 2010 observed as under:

2. It is argued by the counsel for petitioner that the law relating to amendment of the written statement was very liberal and the contradictory proposition could be taken in the written statement. He relied upon certain judgment of the Supreme Court to substantiate this plea. I consider that howsoever liberal be the law in respect of amendment of the written statement, laid down by the Supreme Court or this Court that does not give a license to the petitioner to act mala fide and to file application after application for amendment of the written statement. No provision of Civil Procedure Code can be allowed to be

misused by the Courts so as to frustrate the trial itself. In this case, the provisions of Order VI Rule 17 CPC have been grossly misused by the petitioner by filing one after another frivolous application under Order VI Rule 17 CPC taking frivolous and untenable pleas. The petitioner in this case has succeeded in delaying the trial of this case by seven long years just by filing applications under Order VI Rule 17 CPC and thereafter filing petition under Article 227 before this Court which unfortunately due to peculiarity of our judicial system remained pending for so long. This case is glaring example as to how a party can take liberty with law and misuse it.

7. I find that the present application moved by the petitioner who filed WS in 2002 thereafter moved two applications for amendment and the second one being made after framing of issues and filing of affidavit in evidence was rightly rejected by the trial Court. The present petition is a frivolous petition and is liable to be dismissed with costs. The petition is hereby dismissed with costs of Rs.25,000/- to be paid to the respondent.

March 09, 2010
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SHIV NARAYAN DHINGRA, J.