

* **HIGH COURT OF DELHI: NEW DELHI**

CM (M) No. 1141/2010 & CM No. 15989/2010

% Judgment reserved on: 06th September, 2010

Judgment delivered on: 09th September, 2010

Smt. Durga Devi,
W/o Late Murari Lal,
R/o 5693, 2nd Floor,
Nai Sarak,
New Delhi-110006.

....Petitioner.

Through: Mr. Diwan Singh Chauhan,
Advocate.

Versus

1. Smt. Lalita Rakyan,
W/o Late Shri Laxmi Chand Rakyan,
R/o 1863, Cheera Khana, Maliwara,
Chandni Chowk,
Delhi-110006.

2. Sh. Sudhir Rakyan,
W/o Late Shri Laxmi Chand Rakyan,
R/o 1863, Cheera Khana, Maliwara,
Chandni Chowk,
Delhi-110006.

3. Municipal Corporation of Delhi.
Through its Commissioner,
Town Hall,
Chandni Chowk,
Delhi-110006.

....Respondents

Through: Mr. Jitender Kumar, Adv. for
respondent no.3/MCD.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

This petition under Article 227 of the Constitution of India, has been filed by petitioner against order dated 9th July, 2010 passed by Additional District Judge, Delhi.

2. Brief facts are that in year 2005, respondents no. 1 and 2 (plaintiffs in trial court) filed a suit for possession, injunction and damages for Rs.36,000/- against present petitioner (respondent no.1 in the trial court). In October, 2005 petitioner filed her written statement. In 2010 she filed one application under Order 6 Rule 17 of Code of Civil Procedure (for short as 'Code') for amendment of written statement. Another application was filed under Order 8 Rule 1 (A) of the Code seeking permission to file certain documents. By single order (i.e. impugned order) trial court dismissed both

applications of the petitioner.

3. It is contended by learned counsel for petitioner that amendments sought for are necessary for just and proper adjudication of the controversy involved in the suit and it is not going to change the nature of case.

4. Another contention is that documents sought to be placed on record are vital and same go to the root of the case and are very necessary for fair disposal of the suit. No prejudice is going to be caused to the respondents.

5. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

6. In *Waryam Singh and another vs. Amarnath and another*, **AIR 1954, SC 215**, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

7. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

8. In application under Order 8 Rule 1 (A) of the Code plea of petitioner is that, inadvertently she could not file relevant documents with her written statement.

9. As stated above, written statement was filed 2005. Respondent has already tendered his evidence by way of affidavit. Only reason given by petitioner is that she could not file these documents inadvertently, which is not a sufficient ground to allow the application.

10. In *Madan Lal Vs. ShyamLal*, AIR 2002 SC 100, Supreme court observed;

“Documents not produced at the appropriate stage shall not be received by the Court unless good cause is shown.”

11. Trial court relied upon a decision of this court *Dr. J. K. Jain Vs. Krishnaram Baldeo Investment and Finance Co. Ltd*, CM (M) No. 217/2008 wherein it was held;

“ The Court may permit the production of such documents only on showing sufficient cause. In the present case, the documents sought to be produced by the petitioner later on were not such which were not in the power of the petitioner or could not have been obtained by the petitioner. The petitioner had not made any reference to these documents in the written statement neither filed a list of documents relied upon. I find no reason as to why the court should allow filing of such documents at a belated stage when the petitioner is not able to satisfy the court about the relevancy of these documents and reasons for not filing the same with the written statement or before framing the issues.”

12. Trial court in impugned order held;

“In the present case, the defendant no. 1 filed WS on 22.10.2005 and issues were framed on 12.10.2007. The plaintiff has already tendered his affidavit in evidence. The defendant no. 1 has not relied upon the said documents in WS. The defendant no. 1 failed to explain as to why the said document could not be filed earlier, in whose power and possession the same were, how the said documents are relevant for adjudication of the present case, how the documents became available to the defendant no. 1 suddenly. As such, the defendant no.1 has failed to show any sufficient cause to produce the documents at this stage. In view of the foregoing judgment and discussions, the present application is devoid of merits and is dismissed.”

13. I fully agree with the findings of the trial court and there is no

illegality or irrationality in the impugned order.

14. Now coming to application under Order 6 Rule 17 of the Code, only plea taken is that petitioner being an old lady was not be able to instruct her previous counsel properly and certain facts could not be incorporated in the written statement and wants to incorporate those facts in the written statement.

15. In her written statement, petitioner denied that she is an unauthorized occupant of the property concerned. Relevant portion of written statement read as under;

“It is denied specifically that the answering defendant no. 1 is an unauthorized occupant of the property concerned. In fact, the husband Late Sh. Murari Lal, S/o Sh. Ram Chander was inducted as a tenant in the property concerned at the rate of Rs.40/- (Rupees Forty only) per month by late Sh. Laxmi Chand Rakyan, who was the husband of the plaintiff no.1, the defendant and his family were tenant in the said property in question for more than 35 years. So the answering defendant no. 1 is residing in the same as spouse of tenant late Sh. Murari Lal, she is protected under the provisions of Delhi Rent Control Act 1958”.

16. Thus, it was her husband who was inducted as a tenant in the property at the rate of Rs.40/- per month by Late Sh. Laxmi Chand Rakyan.

17. By way of proposed amendment petitioner wants to take altogether different plea that, in fact Smt. Chameli Devi, her mother was inducted as a tenant in respect of second floor and third floor of the property. Relevant portion of proposed amendment read as under;

“It is denied specifically that the answering defendant no. 1 is an unauthorized occupant of the property concerned. In fact, Smt. Chameli Devi, mother of the defendant no. 1 was inducted as a tenant in respect of second floor and third floor of the property in question consisting of three rooms, one toilet, one bathroom, two open court yards, kitchen, open space at second floor and on thin shed at the third floor at the rate of Rs.40/- (Rupees forty only) per month by Lala Lal Chand Jain, who was the landlord of the same.

18. Above amendment sought for will entirely change the nature of the case and will cause great prejudice to respondents no. 1 and 2. In

Usha Balashaheb Swami & ors Vs. Kiran Appaso Swami & Ors, JT

2007 (5) SC, court observed;

“From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has

commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement to trial.”

19. Thus, there is no illegality or infirmity in the impugned order. The only purpose of filing of this petition is just to delay the proceedings pending in the trial court. Hence, this petition under Article 227 of the Constitution of India is not maintainable. Present petition being frivolous one is hereby dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only). Petitioner is directed to deposit the costs by way of cross-cheque with Registrar General of this court, within four weeks from today.

20. Before parting with, it may be pointed out that trial court vide single order disposed of two applications, one under Order 6 Rule 17 of the Code and other under Order 8 Rule 1 (A) of the Code. These applications are distinct and separate and different relief have been claimed in these applications. These applications ought to have been decided by two separate orders. It is impressed upon all Judicial Officers that separate order should be passed in respect of each application, unless similar relief is claimed in the application.

Registrar General of this Court shall issue necessary directions in this regard to all the Judicial Officers.

CM No. 15989/2010 (stay)

21. Dismissed.

22. List for compliance on 20th October, 2010.

9th September, 2010
ab

V.B.GUPTA, J.