

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

Date of Reserve: 1st February, 2010
Date of Order: 9th March, 2010

CM (M) No. 1457/2009

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09.03.2010

Neelam Kumari Kapoor

... Petitioner

Through: Mr. Ashok Mathur, Advocate

Versus

Smt. Nirmal Sareen & Ors.

... Respondents

Through: Ms. Deepali Chandhoke, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

By this petition, the petitioner has assailed an order dated 1st September, 2009 whereby the learned ADJ allowed an application for amendment of WS moved by the defendants 5, 6 & 8 (respondents no. 1, 2 & 3 herein). The petitioner contends that by way of amendment the defendants have withdrawn admissions made by them and the trial Court erred in allowing the amendment of WS.

2. A perusal of record would show that the defendants in this case moved an application under Order 6 Rule 17 CPC contending that they wanted to correct certain factual errors occurred inadvertently in the WS. It was incorrectly stated that agreement to sell in respect of second floor of property was executed between defendant no.1 and themselves (defendants no. 5 & 6) while in fact defendants no. 5 & 6 as parents of Mr. Charan Sareen had negotiated the transaction of sale of the second floor the agreement to sell was executed by defendant no.1 in favour of their son Mr. Charan Sareen. Apart from above factual error the defendants also wanted to raise certain preliminary objections about the maintainability of the suit in view of non-filing of site plan and certain some other legal objections.

3. The application for leave to amend was filed by the defendants at preliminary stage when issues had not yet been framed and the trial Court after noting down the law for amendment of the WS as laid down by Supreme Court in Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami and Ors. Civil Appeal No. 2019 of 2007 (Arising out of SLP (C) No. 3366 of 2006) decided on 18.4.2007 allowed the amendment observing that matter was still at the stage of pleadings and issues had yet to be framed and no prejudice would be caused to the plaintiff.

4. A contention is raised by the petitioner that by way of amendment an admission made by the defendants in earlier WS in reply to para 25 of the plaint was being withdrawn. A perusal of WS would show that no such admission was made. The case was at initial stage and the letter to the plaintiff did not flow from defendants no. 5 & 6. The admission was made by defendant no.1 about the letter in his WS and not by defendants no. 5 & 6. It is also not a case where defendants no. 5 & 6 had admitted a fact and later by amendment withdrew it. I also find that since the plaintiff and defendant both are relying on written correspondence and admission and denial of documents has yet to take place, issues are yet to be framed, the amendment sought by the defendants was in no manner going to prejudice the plaintiff.

5. I find that the order passed by the trial Court allowing amendment application was perfectly within the jurisdiction of the trial Court. There is no ground for this Court to interfere in the order of the trial Court. The petition is hereby dismissed.

March 09, 2010
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SHIV NARAYAN DHINGRA, J.