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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) Nos.239/2011, 240/2011 & 241/2011

PRABHADEVI GUPTA DECD THR LRS & ANR Appellants
 Through: Appellant No.2 and sole heir of Appellant
 No.1 in person.

versus

MRIDUL AGGARWAL & ANR Respondents
 Through: Mr. Rajesh Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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09.11.2011

CM No.8923/2011 (Exemption) in FAO (OS) No.239/2011
CM No.8925/2011 (Exemption) in FAO (OS) No.240/2011
CM No.8927/2011 (Exemption) in FAO (OS) No.241/2011

Allowed subject to just exceptions.

FAO (OS) No.239/2011, CM No.8922/2011 (for condonation of delay of 70 days in refiling) & CM No.20356/2011 (condonation of delay of 12 days in filing)

FAO (OS) No.240/2011, CM No.8924/2011 (for condonation of delay of 70 days in refiling) & CM No.20303/2011 (condonation of delay of 12 days in filing)

FAO (OS) No.241/2011, CM No.8926/2011 (for condonation of delay of 70 days in refiling) & CM No.20370/2011 (condonation of delay of 12 days in filing)

A suit for partition of property bearing No.A-9, Niti Bagh, New Delhi was filed by respondent No.1 against her siblings alleging that the property has devolved on all the legal heirs on the demise of their father Shri

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 file and no page is missing.

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Mahendra Swarup Gupta (for short 'Shri M.S. Gupta'). The suit was resisted by the appellant and another defendant. The appellant *inter alia* claims that there are number of other properties, which have been left out from the partition.

The issues were framed in the suit and affidavits of evidence were filed by respondent No.1 and it is after the commencement of trial that an application has been filed by the appellant seeking to amend the written statement. This application is followed by another application for placing on record additional documents and for framing of additional issues. These applications have been dismissed by the impugned order dated 26.11.2010.

It is the say of the appellant, who is an Advocate and appears in person, that the learned single Judge fell into an error taking a technical view of the matter as though strictly speaking the evidence had commenced, the cross-examination was yet to start. He further submits that paragraphs which are sought to be added are only elucidatory in nature and are left out due to computer mistake.

The learned single Judge has taken note of the fact that the amended provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code') had come into force prior to the institution of the suit and, thus, would apply and in view of proviso to Order 6 Rule 17 of the said Code, the appellant has to satisfy the Court that despite exercising due diligence the pleas could not be included.

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We find that the so-called computer mistake pertains to a plea of the appellant to add 54 paragraphs after paragraph 59 of the preliminary objections. Interestingly, the appellant has already availed of one opportunity to amend the written statement earlier but claims that even at that stage it could not be detected that computer mistake had occurred.

We find the plea urged by the appellant completely unacceptable. It is not a computer mistake, which has caused a paragraph or two to be missed out but a plea running into 54 paragraphs after paragraph 59 of preliminary objections. Not only that, the appellant has availed of the benefit of seeking amendment to the written statement earlier. The story of computer mistake is completely unbelievable.

It cannot be disputed that proviso to Order 6 Rule 17 of the said Code has come into play and thus the appellant would have to satisfy the Court that those pleas could not be included despite due diligence. This test is completely unsatisfied in the facts of the present case.

The appellant seeks to rely upon a judgement of the Supreme Court in Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and Ors. (2009) 10 SCC 84, more specifically paragraph 21 to contend that the amendment to a plaint and written statement stand on a different footing and a more liberal approach is required to be taken for amendment of a written statement. The appellant states that this principle should apply despite the proviso having come into play.

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We have to keep in mind the purpose with which the Legislature enacted the proviso and amended various provisions of the said Code. Prolonged trials and delays by parties were sought to be discouraged by keeping parties bound to periods within which they have to comply with the provisions of the said Code. It is with the object of preventing delays in the trial on account of dilatory tactics of the defendants that the proviso was sought to be included in the provision of Order 6 Rule 17 of the said Code. The conduct of the appellant, in fact, was completely contrary to the very purpose for which the said proviso was enacted by repeatedly seeking to amend the written statement and add 54 paragraphs as preliminary objections in the written statement after trial has commenced.

There is another aspect to the matter arising from the appellant being an Advocate and not an uneducated person who did not know what defence ought to be pleaded. Not only that, it is the own case of the appellant that paragraphs according to him are elucidation (though this position is disputed by learned counsel for respondent No.1).

We may also take note of the fact that after paragraph 21 relied upon by the appellant in Revajeetu Builders & Developers case (supra), the historical background of the insertion of the proviso to Order 6 Rule 17 of the said Code has been discussed in paragraphs 30 to 34, which read as under:

“30. We deem it appropriate to give historical background of Rule 17 of Order VI corresponds to Section 53 of the Old Code of 1882. It is similar to Order 21 Rule 8 of the English Law. Order VI Rule 17 CPC reads as under:

Amendment of Pleadings.-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

31. In our considered view, Order VI Rule 17 is one of the important provisions of the CPC, but we have no hesitation in also observing that this is one of the **most misused provision of the Code for dragging the proceedings indefinitely**, particularly in the Indian courts which are otherwise heavily overburdened with the pending cases. All Civil Courts ordinarily have a long list of cases, therefore, the Courts are compelled to grant long dates which causes delay in disposal of the cases. **The applications for amendment lead to further delay in disposal of the cases.**

32. It may be pertinent to mention that with a view to avoid delay and to ensure expeditious disposal of suits, Rule 17 was deleted on the recommendation of Justice Malimath Committee by the Code of Civil Procedure (Amendment) Act, 1999 but because of public uproar, it was revived. Justice C.K. Thakker, an eminent former Judge of this Court in his book on Code of Civil Procedure (2005 Edition) incorporated this information while dealing with the object of amendment.

33. In a recently published unique, unusual and extremely informative book "Justice, Courts and Delays", the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a Civil Lawyer observed that **80% applications under Rule VI Order 17 are filed with the sole objective of delaying the proceedings, whereas 15% application are filed because of lackadaisical approach in the first instance**, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (even may be less) are rejected. According to him, a need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for allowing amendment, it is not just

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costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.

34. To curtail delay in disposal of cases, in 1999 the Legislation altogether deleted Rule 17 which meant that amendment of pleading would no longer have been permissible. But immediately after the deletion there was widespread uproar and in 2002 Rule 17 was restored, but added a proviso. That proviso applies only after the trial has commenced. Prior to that stage, the situation remains as it was. According to the view of the learned author Arun Mohan as observed in his book, although the proviso has improved the position, the fact remains that amendments should be permissible, but only if a sufficient ground therefore is made out, and further, only on stringent terms. To that end, the rule needs to be further tightened.”

The order of the High Court declining the plea of amendment after four (4) years was, in fact, sustained by the Supreme Court and the appeal was dismissed with costs of Rs.1.00 lakh.

Learned counsel for respondent No.1 states that the appellant has, in fact, concealed and not even challenged the subsequent order dated 12.1.2011 seeking correction of the same order which plea was rejected. The explanation given by appellant is that the order on the application was passed on 12.1.2011 and the appeal was filed on 11.1.2011. If the application was listed on 12.1.2011 it would have been filed, at least, prior to that date and thus even this plea of the appellant cannot be accepted.

We may also note that the appeals remained under objections and were refiled repeatedly from 11.1.2011 to 7.4.2011 yet this fact has not been disclosed.

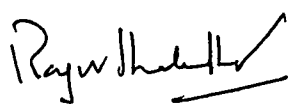
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We may also notice that three appeals are arising because apart from the order passed rejecting the application for amendment of the written statement, the appellant sought to bring on record additional documents and framing of additional issues. For the same reason of lack of due diligence the learned single Judge, in our view, rightly so has rejected the request to bring on record the additional documents as also the consequent application for framing of additional issues.

We may also note another fact that while framing the issues, one additional issue was framed after hearing the counsels in the suit which pertains to the plea of the appellant as to whether properties other than the property mentioned in the suit, form a part of estate of late Shri M.S. Gupta and the onus has been put on the appellant for the said purpose.

We find the appeals completely meritless and an endeavour to delay the trial and consequently dismiss the appeals & and the applications with costs quantified at Rs.5,000.00 per appeal payable to respondent No.1.


SANJAY KISHAN KAUL, J.


RAJIV SHAKDHER, J.

NOVEMBER 09, 2011
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