

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

% *Date of Judgment: 15.03.2012.*

+ **CM(M) No. 1611/2004**

M/S.DLF UNIVERSAL LTD. Petitioner
Through Mr. V.B. Andley, Sr. Advocate
with Mr. K.L. Arya, Adv.

versus

RIPA DEVI & ANR. Respondent
Through Mr. M.L. Bhargava, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Two orders have been impugned before this Court. First order is dated 18.11.2003 and the second order is 01.10.2004; the result of the aforementioned orders is that the amended written statement which the defendant had sought permission of the Court to file was disallowed.

2. Record shows that a suit for specific performance had been filed by the plaintiff Ripa Devi against the defendant DLF Universal Ltd.. A provisional booking of a plot of land measuring 420 square meter was made by the plaintiff i.e. plot No. C-4/5, DLF Qutub Enclave, New

Delhi in the year 1981. Since the defendant had not performed his part of the agreement, the aforementioned suit filed by the plaintiff in the year 1984; this suit was initially filed in the Court of Gurgaon; however since that Court did not have the jurisdiction, it was directed to be presented before the competent Court which was the High Court of Delhi; plaint was presented in the High Court on 13.10.1984; on 15.11.1984, written statement was filed by the defendant. In the course of these proceedings an application under Order XXII Rule 10 of the Code of Civil Procedure (hereinafter referred to as the 'Code') was filed by one Gita Bajaj alleging that vide an agreement dated 18.06.1989, Ripa Devi had sold her share/interest in the suit property in her favour and in view of this assignment, she sought impleadment. On the statement made by learned counsel for the defendant, this application was allowed on 28.02.1993; she was arrayed as plaintiff No. 2; the plaintiff was directed to file his amended plaint; the plaintiff did not file his amended plaint; he only filed an amended memo of parties which was on 02.02.1994.

3. Thereafter because of change of pecuniary jurisdiction, the matter was transferred to the District Court; on 25.09.2001 suit was dismissed in default which was restored on 15.02.2002. On 15.02.2002, the order CM(M) No. 1611/2004

was reiterated and the plaintiff was directed to file his amended plaint. This amended plaint was filed on 10.04.2002. This amended plaint had again made no change in the body of the plaint; only the cause title had changed; Gita Bajaj was arrayed as plaintiff No. 2. This was the sum total of the amendments.

4. Vide order dated 10.04.2002, the defendant had also been given opportunity to file his amended written statement which was to be filed by 09.07.2002. This amended written statement was not filed. On 31.05.2002 instead the defendant filed an application under Order 7 Rules 10 & 11 of the Code seeking a rejection of the plaint on the ground that it does not disclose any cause of action; this application was dismissed on 05.04.2003. A revision petition was filed in the High Court and vide order dated 22.07.2003, High Court granted opportunity to the defendant to advance his claim for filing the amended written statement before the trial Court.

5. This prayer was again made by the defendant in the trial Court which was rejected by the first impugned order dated 18.11.2003. Not satisfied with this rejection, an application under Order 8 Rule 9 of the Code read with Section 148 of the Code read with Section 5 of the CM(M) No. 1611/2004

Limitation Act was filed by the defendant seeking enlargement of time in filing the written statement; this application was dismissed by the second impugned order dated 01.10.2004.

6. This is the checkered history of the case.

7. Record clearly shows that the matter has been lingering on which is all for the fault on the part of the defendant; this litigation has burdened the dockets of the Court. Record shows that the first written statement was filed by the defendant in November, 1984. Amended memo of parties was filed on 22.02.1998. The amended plaint was filed on 10.04.2002; it is an admitted fact that this amended plaint was a replica of the original plaint; there was only a change in the cause title where Gita Bajaj had been arrayed as plaintiff No. 2. Vide order dated 10.04.2002, specific time had been granted to the defendant to file his written statement which had to be filed up to 09.07.2002. In spite of this opportunity, he did not file his written statement. He instead filed an application under Order 7 Rule 11 of the Code; after its dismissal, the order was assailed in a revision petition before the High Court. On 18.11.2003, the trial Court after recording the checkered history of the case dismissed the plea made by the defendant for filing his additional

written statement. This was on an application under Section 151 of the Code. After the dismissal of this plea on 18.11.2003, the defendant/petitioner did not allow the matter to rest; in fact, his oral submission is that his prayer should be treated as a prayer under Section 148 of the Code for enlargement of time had also been considered in the order dated 18.11.2003 but had been rejected.

8. The defendant continued with his protracted litigation. The second application was filed under Section 148 of the Code, under Order 8 Rule 9 of the Code and under Section 5 of the Limitation Act; it was paramateria the earlier application which had been dismissed by the first impugned order dated 18.11.2003; there was no change in the circumstances or fact. This was dismissed by the second impugned order dated 01.10.2004.

9. The present petition has been filed and is pending before this Court since the year 2004. Such litigations which are languishing and clog and choke the board of the Courts are not only vexatious but also disallow justice to a person who has a genuine cause; the boards getting frivolously burdened with such kind of useless litigations; the Courts have little time to deal with the real, bonafide and genuine cases.

10. A Division Bench of this Court in 76 (1998) DLT 755 Kedar Nath & Others Vs. Ram Prakash & Others in fact had an occasion to deal with the provisions of Order 8 Rule 9 of the Code; it had noted that an amendment has to be consistent with the previous pleadings; in this case admittedly there is not an iota of change in the amended plaint; this is replica of the original plaint; the defendant has allowed this entire time period to elapse to seek an amendment which in no manner can advance his case as the law is well settled that the written statement cannot be permitted to be amended beyond what is contained in the amended plaint.

11. This petition is clearly an abuse of the process of the Court; it is dismissed with costs of ₹10,000/-.

INDERMEET KAUR, J

MARCH 15, 2012

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