

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

+ **CM (M) 1130/2012**

Date of Decision: 17.10.2012

NARESH SHARMA - HUF

.....Petitioner

Through: Mr.Ved Parkash Sharma,
Ms.Amrit Kaur Oberoi,
Mr.Mayank Garg, Advs.

Versus

RAMKISHAN GUPTA & ANR.

.....Respondent

Through: Mr.Hemant Malhotra, Adv. with
Mr.S.Malhotra, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution challenges the order dated 31.08.2012 of learned Addl. District Judge (Central-07), Tis Hazari Courts, whereby the application under Order 6 Rule 17 CPC filed by the petitioner/objector, was dismissed.

2. The respondent No. 1 filed a suit bearing No. 163/89 against the respondent No. 2, which came to be decreed ex parte on 2.5.1990. The respondent No.1/Decree Holder filed the execution petition wherein objections were filed by the petitioner under Order 21 Rule 99 & 100 CPC. These objections came to be dismissed by the ADJ vide his order dated 27.9.2010. The petitioner filed appeal being EFA No. 20/2010 before this court, which came to be disposed by the consent

order dated 12.1.2012, and the matter was remanded back to the Trial Court for disposal, after giving opportunity to the parties to lead their evidence. It was at this stage, that the petitioner filed the instant application under Order 6 Rule 17 CPC seeking amendment in his objections' application. The said application came to be dismissed by the learned ADJ vide impugned order dated 31.8.2012. The same is under challenge in the instant petition.

3. The main ground on which the impugned order is challenged is that the respondent No. 1/Decree Holder had obtained ex parte decree against the Judgment Debtor (respondent No.2) by playing fraud upon the court in not getting Judgment Debtor served at the correct address, and also manipulating the report of the refusal on the summons. It was submitted that the Decree Holder had given the incorrect address of the Judgment Debtor, and he being not served at the given address, got him served by way of affixation, and ultimately, manipulated the service and got ex parte eviction order. It was submitted by the learned counsel for the petitioner that the sought amendments are relevant and necessary for the just decision of the controversy between the parties. Based on this, amendments are sought in Para 6A to 6E of the objection application/petition.

4. On the other hand, learned counsel appearing for the respondent No. 1/Decree Holder submitted that the sought amendments are neither relevant nor necessary for the decision of the controversy raised by the

petitioner. It was submitted that vide the objections under Order 21 Rule 99 & 100, the petitioner intended to establish his independent right in the suit premises and he has no locus standi to challenge the judgment and decree that was passed against the Judgment Debtor/respondent No. 2. It was submitted that the pleas regarding the manner of service on respondent No. 2/Judgment Debtor, were already in the knowledge of the petitioner for the last several years, and the same having not been taken earlier before the Executing Court or before this Court, could not be allowed to be taken at this stage.

5. Before advertng to the respective submissions of learned counsel for the parties, it is important to keep in mind that the power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227. Reference in this regard

can be made to the decisions of the Supreme Court in **Waryam Singh and Anr. Vs. Amarnath and Anr., AIR 1954 SC 215** and **Mohammed Yusuf Vs. Faij Mohammad and Ors., I (2009) CLT 153 (SC)**.

6. Though the law with regard to the amendments is liberal and amendments can be allowed widely at any stage, but it is also settled law that exercise of such far-reaching discretionary powers is to be governed by judicial considerations and wider the discretion, the greater ought to be the care and circumspection on the part of the court. The amendments cannot be claimed as a matter of right and under all circumstances. Exercise of discretion of the court in accepting or rejecting an amendment would depend upon the fact and circumstances of the case and has to be exercised on judicial evaluation.

7. In the case of **Rajesh Kr. Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647**, the Hon'ble Supreme Court held thus:

“16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI, Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of

determining the real question in controversy between the parties.

19. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused.”

8. From the above legal propositions as enunciated by the Supreme Court repeatedly and reiterated in the abovesaid case, it would be noticed that the cardinal test is as to whether or not, the sought amendments are necessary to decide the real issue between the parties.

9. In the instant case, the respondent No. 1 had obtained an ex parte judgment and decree against the respondent No.2/Judgment Debtor on 2.5.1990. The submission of the petitioner’s counsel is that the address that was given of the Judgment Debtor was that of village Mehrauli, whereas, his address was of village Neb Sarai, Tehsil Mehrauli, New Delhi and this was intentionally withheld by the respondent No. 1/Decree Holder.

10. The submission of the respondent’s counsel, on the other hand, is that it was this address of respondent No. 1/Judgment Debtor, which was available at the relevant time with the respondent No. 1/Decree Holder, and that at that point of time, there were no numbers etc. in the villages. It was submitted that even in the documents which were allegedly executed by Pushpa Singh in favour of the petitioner, the

address of Judgment Debtor was the same as that of village Mehrauli, which was mentioned by the Decree Holder in the plaint, and on which, the summons were taken. This was not controverted by the learned counsel for the petitioner.

11. Be that as it may, the question for consideration would be as to whether the sought amendments are relevant and necessary for the just decision of the objections, which have been filed by the petitioner. The petitioner has filed the objections, setting up his independent claim in the suit premises on the ground of his having purchased the same from Vinod Rajoria by way of documents such as GPA, Agreement to Sell etc. In the objections which have been filed by the petitioner, he is required to establish his claim that has been set up in the objection petition that he acquired right in the suit premises. Since the petitioner was not claiming having derived any right from Judgment Debtor, and was also not a party to the judgment and decree that was passed against J.D., he had no locus standi to challenge the sustainability of the judgment and decree. The learned ADJ observed, and rightly so, that the he being the stranger to the said suit, was not bound by the said decree and thus, had no locus standi to challenge the basis of any deficiency in service or the service report of Judgment Debtor. He has nowhere taken any such plea in the objection petition that was filed by him. The plea regarding deficiency in service on the Judgment Debtor in the suit, in which, he (petitioner) was not a party, was to be extraneous to the objection petition, which was primarily filed on the

ground of his being bona fide purchaser of the suit premises from Vinod Rajoria. Since the plea that is sought to be taken now is neither relevant nor necessary for the adjudication of the objections, which have been filed by the petitioner, the sought amendments cannot be allowed to change the dimension of the controversy arising in the objection petition.

12. Moving further, it would be seen that material available on record would show that the plea which is now sought to be raised by the petitioner by way of amendment was well within his knowledge on the court case and manifests the absence of due diligence on his part and thus, disentitles him to the relief sought. In the case of **Surya Sikander and Ors. Vs. Netha Spinning Mills and Ors. JT 2002 (8) SC 287** and also **Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Anr. JT 2003 (8) Sc 478**, the Supreme Court held that the discretion for allowing or disallowing an amendment should be exercised as per the settled norms of civil jurisprudence and where the applicant has acted callously and without due diligence, the court should dismiss such application.

13. In the instant case, as noted above, the objections filed by the petitioner under Order 21 Rule 99 & 100 CPC were dismissed by the learned ADJ on 27.9.2010, and being aggrieved of the same, he preferred an appeal being EFA No. 20/2010 before this court. This

court vide order dated 12.1.2012 remanded the matter back to the court of ADJ for disposal after giving opportunity to the parties to lead evidence. It was neither in the objections before the ADJ nor in the EFA that the plea of ineffective or manipulated service upon the Judgment Debtor was taken by the petitioner. Not only this, it is also noted that the objections were filed by others namely Yogender Kumar and Om Kumar, which were also dismissed by the ADJ on 27.9.2010. Being aggrieved, they also filed EFA No. 18/2010 before this court, which came to be allowed vide order dated 5.7.2011. In the said objection application as also in the appeal, those objectors had raised a plea regarding service of Judgment Debtor and alleged fraud played by the Decree Holder. Both these objections were disposed of by the common order dated 27.9.2010. Undisputedly, in both the appeals i.e. EFA No. 18/2010 and 20/2010, the same counsel appeared for the objectors. The EFA No. 18/2010 was disposed on 5.7.2011 and the EFA of the petitioner was disposed by this court on 12.1.2012. From all this, it would be manifest that the plea of service and fraud that was taken by the objectors Yogender Kumar and Om Kumar, was well within the knowledge of the petitioner, but no such plea was taken in the objections or in the EFA before this court. The submission that the petitioner has now come to know about this after doing inspection, is fallacious. Be that as it may, the fact remains that the sought amendments are neither relevant nor necessary for the decision of the objections filed by the petitioner.

14. In view of my above discussion, I do not find any illegality or infirmity in the discretion that was exercised by the learned ADJ in the entire scenario of facts and thus, do not intend to interfere with the same. The petition merits dismissal and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 17, 2012

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