

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

% *Date of Judgment: 23.01.2012*

+ **CM(M) 1446/2009 & CM No. 17995/2009**

TARA V GANJU & ANR Petitioners
Through Mr. Neeraj Kishan Kaul, Sr.
Advocate with Mr. Dharmesh
Misra, Mr. Siddhart Asthana
and Ms. Gaurav Malik, Advs.

versus

BASANT & CO & ORS Respondents
Through Mr. Shankar Vaidialingam and
Ms. K.B. Hina, Advs.
Ms. Rita Kaul, Adv. for R-5 &
R-6.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 06.10.2009 vide which the application filed by the plaintiff seeking an amendment of his plaint under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as the 'Code') had been dismissed.

2. Record shows that the present suit has been filed by the plaintiff for declaration, cancellation, permanent injunction,

possession and damages. There are seven defendants who have been arrayed as parties. Contention of the plaintiff is that the portion shown in blue and green colour shown in the site plan filed along with the plaint is in possession of defendants No. 1 & 2; prayer for decree of possession along with other prayers as contained in the prayer clause has been made. This was suit filed in the year 1995.

3. It is not in dispute that thereafter three applications had been filed seeking amendment of the plaint. The first application dated 17.4.1996 had been allowed after a prolonged litigation by a Bench of this Court on 26.04.2002 wherein the plaintiff had been permitted to incorporate a fact that the possession of the premises has been handed over by defendants No. 1 & 2 to a tenant M/s Osram Surya (I) Pvt. Ltd. This amendment had been allowed on 26.04.2002. The amended plaint shows that no consequential amendment in the prayer clause had been made; the amendment qua this fact had been contained in the body of the plaint itself. Thereafter another application had been filed by the plaintiff on 09.7.2002 seeking permission of the Court to transpose NDMC as a party which has been permitted to be withdrawn on 03.9.2003. The third application for amendment had been allowed on 05.3.2005. It is also not in dispute that a

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misc. petition (OMP No.409/2003) had also been filed by the plaintiff on 29.10.2003 seeking a stay on the transfer of the present suit proceedings from the High Court to the District Courts which had been dismissed on 27.5.2009.

4. This application under Order 6 Rule 17 of the Code seeking amendment in the plaint has been filed in the year 2005; the averments made in the said application have been perused. It is contended that the premises which were in occupation of the company M/s Osram Surya (I) Pvt. Ltd. have since been vacated; this has been contended in para 12 of the said application; accordingly a prayer has been made to amend para 37 of the existing plaint whereby the pecuniary jurisdiction of the suit which had earlier valued it at ₹15 lacs is sought to be enhanced to Rs. 25,25,530/-; necessary corollary would be that the jurisdiction of the District Court would be ousted and the suit would have to be transferred to the High Court as all matters relating to pecuniary jurisdiction over and above ₹20 lacs are to be filed in the High Court.

5. This prayer made in the application had been rejected. The impugned order had noted that the proviso added by the Amendment Act of 1999 to Order 6 Rule 17 of the Code limits the

powers of amendment; the negligence and lack of diligence shown by the plaintiff was also a consideration which had weighed in the mind of the trial Court to reject the application. Learned counsel for the petitioner has placed reliance upon the judgment of the Apex Court reported in 2003 (27) PTC 175 Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd. to support his submission that at the stage of dealing with an application under Order 6 Rule 17 of the Code, the Court does not have to go into the merits of the matter and such a question can only be decided at the trial of the suit; further contention being that merely because an amendment may take the suit out of the jurisdiction of one Court to another is no ground for refusing the amendment. To the same effect is the ratio of the judgment reported as 2009 (40) PTC 472 (Del.) Prem Raj Parakh Vs. Shah Food Products & Anr.; it is submitted that this is a rule of procedure and if the Court is otherwise satisfied that the party applying was not acting malafide and if no prejudice is caused to the non-applicant party, which is so in the present case, the rules of procedure which are mere handmaids of justice should be interpreted liberally and the relief should not be refused. For the same proposition, reliance has also been placed upon the judgment reported as AIR 1969 SC 1257 Jai Jai Ram Manohar Lal VS. National Building Material Supply, Gurgaon as

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also upon 128 (2006) DLT 460 Surinder Kau & Others Vs. S. Rajdev Singh & Others. Contention is that this application had been filed before framing of issues; further contention being that the plaintiff is the *dominus litus* of his case and it is for him to choose who are the parties he wants to array as defendants as also to decide upon the pecuniary jurisdiction and as long as no prejudice is suffered by the non-applicant, the Court should be liberal in allowing the amendment.

6. Arguments have been refuted. Contention is that the proviso to Order 6 Rule 17 of the Code is applicable to litigations which have even been filed even prior to 2002 and for this proposition reliance has been placed upon the judgment reported as (2007) 1 SCC 765 State Bank of Hyderabad Vs. Town Municipal Council. Further contention being that the plaintiff is keeping the sword hanging on the defendant for no reason; the amendments sought for do not in any manner fit in within the parameters of Order 6 Rule 17 of the Code.

7. Perusal of the record shows that the submissions made by learned counsel for the respondent have force. The original suit is a suit for permanent and mandatory injunction coupled with a prayer of possession from defendants No. 1 & 2; vide an order of this Court dated 26.04.2002, the plaintiff had been permitted to
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incorporate a plea that the premises have since been handed over by defendants No. 1 & 2 to the tenant M/s Osram Surya (I) Pvt. Ltd.; by virtue of this present application which has been filed in 2005, contention is that M/s Osram Surya (I) Pvt. Ltd. has since vacated the premises; application is however totally silent as to how and when the plaintiff came to know about the premises having been vacated and as to how this pleading would be necessary to decide the real controversy of dispute between the parties which is the language of Order 6 Rule 17 of the Code.

8. The object of this provision is to do justice and not to shut out justice merely on technicalities; this power has to be exercised for deciding the real question in controversy between the parties; in the first amended plaint it has already been incorporated that the possession of the premises had been handed over by defendants No. 1 & 2 to the tenant M/s Osram Surya (I) Pvt. Ltd. The fact that he has vacated the premises will in no manner make any difference to the case in hand; even assuming that this is a true fact, it is not necessary to incorporate it as part of the pleadings as it will not in any manner effect the controversy in question between the parties which as noted supra is a suit which has been filed by the plaintiff against the defendant seeking a

mandatory and permanent injunction as also possession of the suit
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premises from defendants No.1 & 2 which as per the amendment plaint had been handed over to M/s Osram Surya (I) Pvt. Ltd. The application under Order 6 Rule 17 of the Code as noted above has not whispered even one word as to how and in what circumstances the fact of vacation of the suit premises by M/s Osram Surya (I) Pvt. Ltd. was made known to the plaintiff and how it will affect the merits of the controversy between the parties. This averment in the application has thereafter been followed up by a prayer that the pecuniary jurisdiction of the court accordingly be enhanced from Rs.15 lac to Rs.25 lac; how and in what manner this will serve the purpose of the petitioner has not again been averred in the application.

9. Amendments have to be allowed to avoid uncalled multiplicity of litigation; they should be viewed with a liberal approach and delay may not be a ground for refusing a prayer for amendment, if the merits of the case so demands. However, this is not so in the instant case. The submission of the non-applicant/defendant that the whole purpose of the amendment is only to further delay the litigation and keep the sword hanging upon the head of the defendant is an argument which cannot be rejected straightaway as the record shows that the suit which has

and in fact the submission of learned counsel for the respondent that orders on the application under Order XXXIX Rules 1 & 2 of the Code have also not been passed is also not disputed. This is not and could not be the purpose of allowing an amendment; the Court is at total loss to understand how even in the eventuality that the amendment is allowed in what manner will it throw light upon the controversy in question between the parties; an amendment cannot be allowed only as per the whim and fancy of the plaintiff.

10. Impugned order in this context dismissing the application under Order 6 Rule 17 of the Code thus suffers from no infirmity. Dismissed.

JANUARY 23, 2012
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INDERMEET KAUR,J