

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

% Order delivered on: 12.07.2013

+ CM(M) 288/2013

MOHD. AYUB ANSARI & ANR. Petitioner
Through Mr. S.S. Jain & Mr. R.K. Sharma,
Advts.

versus

SHANE ALAM ANSARI Respondent
Through Mr. R.K. Alagh and Mr. P.K. Bhatnagar,
Advts.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J. (Oral)

1. The present petition is filed under Article 227 of the Constitution of India against the order dated 31st August, 2012 passed by the learned Trial Court whereby application of the petitioner (defendant in the suit) under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of written statement was partially dismissed.
2. The said application arose out of suit for specific performance of the contract and consequential relief of mandatory injunction filed by the respondent (plaintiff in the suit) against the petitioners with regard to property bearing no.D-539, Shakur Pur, Anand Vaas, Delhi-110034.
3. The said application sought to alter the pleadings to the effect that the bayana receipt dated 13th October, 2009 was signed and executed by petitioner No.1 alone (defendant No.1) and petitioner No.2 (Defendant No.2) was not a

necessary and proper party to the suit so her name should be struck off from the array of parties. Further, the petitioner No.1 was not authorized by petitioner No.2 to enter into an agreement to sell in respect of suit property or to receive bayana and execute bayana receipt for the same on her behalf, so the said bayana receipt or agreement to sell is not binding on petitioner No.2.

4. The respondent opposed the said application by contending that the petitioner wanted to withdraw their admission in the written statement that the bayana receipt was executed by both the petitioners.

5. On considering the contentions raised by the parties, the learned Trial Court observed that the allegations of the respondent that he entered into an agreement/bayana/earnest money receipt with the petitioner on 13th October, 2009 was admitted by petitioner in their written statement, in respect of the suit property. Even in another suit between the parties wherein the petitioners were the co-plaintiffs, the petitioners had admitted the execution of the said bayana receipt and in fact the evidence was also led admitting this fact in that earlier suit. So this part of the amendment could not be allowed. However, as regards the other amendments as mentioned and for the reasons set out in the order, the application was allowed.

6. After having considered the said facts and circumstances of the case, this court is not inclined to interfere with the order passed by the learned Trial Court. The impugned order thus does not suffer from any infirmity. The petition is, therefore, dismissed.

7. The pending applications are also disposed of.

JULY 12, 2013

**(MANMOHAN SINGH)
JUDGE**