

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.11.2013

+ **FAO(OS) 539/2013**

NEETA SHARMA

..... Appellant

Versus

K.K. SAREEN & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr R.K. Trakru

For the Respondents : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the order dated 12.11.2013 passed by the learned single Judge of this court in IA No. 13515/2013 which was an application filed by the appellant/defendant no.1 seeking to amend the written statement in CS(OS) No. 1318/2005.

2. The amendment that was sought were to incorporate new paragraphs 11,12,13 and 14 in the written statement as legal pleas. Those proposed paragraphs have been set out in the impugned order and for that reason we are not setting out the same herein.

3. The learned single Judge has noted that the evidence had already been concluded and the suit was at the stage of final hearing. It is at this stage that the appellant moved the said application under Order VI Rule 17 CPC for amendment of the written statement. The learned counsel for the appellant urged before us that this was not by way of any delaying tactics, inasmuch as, he had made it clear to the learned single Judge that he would not be leading any evidence whatsoever and, therefore, according to him no prejudice would be caused to the plaintiff. He also submitted that in order to obviate any delay, he had filed the proposed written statement along with the said application.

4. The learned single Judge, however, did not accept the contentions raised by the appellant, inasmuch as, he was unable to find any extenuating circumstances which could persuade him to conclude that the proposed amendments could not have been incorporated in the written statement already filed by defendant no.1, in spite of due diligence, before the commencement of the trial in the present case.

5. Before us, the learned counsel for the appellant referred to two decisions of the Supreme Court. The first being the decision in **Sajjan Kumar v. Ram Kishan (2005) 13 SCC 89**. He placed reliance on paragraph 2 & 5 of the said decision which read as under:-

“2. The plaintiff-appellant is admittedly owner-cum-landlord of the suit property. He filed a suit for eviction against the respondent tenant. The proceedings in the suit were at a final stage when the plaintiff-appellant moved an application for amendment of the plaint. The proposed amendment sought the correction of the description of the

suit premises in the plaint. It was alleged by the plaintiff-appellant that the description of the property given in the rent note itself was incorrect and the same description was repeated in the plaint and there would be complications at the stage of execution to avoid which the description of the suit premises as given in the plaint needed to be corrected.

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5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

6. We may point out that the said decision is immediately distinguishable, inasmuch as, the amendment sought was only a correction of the description of the property. The second decision referred to by the learned counsel for the appellant was in case of

Surender Kumar Sharma v. Makhan Singh (2009) 10 SCC 626. He

placed reliance on paragraph 5 & 6 thereof which read under:-

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be ground to refuse the amendment.

6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. (See *B.K. Narayana Pillai v. Parameswaran Pillai*.) Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.”

7. It is evident from the above decisions that the main point urged was with regard to the belated nature of the application under Order 6 Rule 17 CPC. The Supreme Court held that under Order 6 Rule 17 CPC wide powers and unfettered discretion had been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court to be just and proper and, therefore, in appropriate cases even though the application for amendment had been filed belatedly the court could allow the amendment to the pleadings.

8. We do not see as to how the said decision would come to the aid of the appellant herein. This is so because the learned single Judge has examined the case of the appellant and has come to a clear conclusion that the appellant was not diligent when the written statement was filed in the first instance. In this context it would be necessary to note the provisions of Order 6 Rule 17 which have been amended with effect from 01.07.2002. The same reads as under:-

“17. 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.”

9. The proviso extracted above makes it clear that no application for amendment is to 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. In the present case the trial had commenced long back and the evidence had already been concluded. The learned single Judge has on facts, not accepted the plea of the appellant that the appellant could not have raised the points sought to be raised in the proposed amendment in spite of due diligence. The view taken by the learned single Judge is a reasonable one and, therefore, this being an appeal, there is no reason for us to substitute any other view in place of one that has already been taken by the learned single Judge with regard to the aspect of due diligence.

10 In these circumstances there is no merit in the appeal. The same is dismissed.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

NOVEMBER 25,2013

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