

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

+ **CS(OS) No.357/2006**

Date of Decision : 10.05.2010

Mohan Madan

.....Plaintiff

Through: Mr. Vinay Kumar Garg,
Advocate.

Versus

Smt. Sheel Gulati

..... Defendant

Through: Mr. Vikas Nagpal,
Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

IA No.2182/2010

1. This order shall dispose of an application under Order VI Rule 17 filed by the plaintiff. Briefly stated, the facts of the case are that the plaintiff has filed a suit for declaration, specific performance and injunction against the defendant. The case which has been set up by the plaintiff against the defendant is that the latter had agreed to sell his built-up property bearing No.BN-53, Shalimar Bagh (East), Delhi measuring 250 sq.yards to the plaintiff on 5.10.2005 for a total sale consideration of Rs.2.39 crore. It is alleged that the aforesaid transaction was entered with the help of a

property dealer by the name of one, Raju of M/s Pardesi Properties, Sector-11, Rohini, Delhi. On 5th October, 2005, the plaintiff is purported to have paid a sum of Rs.25.00 lakh as an earnest money to the defendant and the latter is purported to have acknowledged the receipt of the aforesaid amount and the other terms and conditions of the agreement. It is stated that the important terms and conditions which were mentioned in the receipt were as under :

- i) The last date for execution of documents is 20th April, 2006.
- ii) The house was to be got converted into freehold and all the dues had to be cleared by the defendant upto 20th April, 2006.
- iii) A further part payment of Rs.50.00 lakh had to be made on 20th January, 2006 and
- iv) further part payment of Rs.25.00 lakh had to be made by the plaintiff to the defendant on 20th February, 2006.

2. It is alleged that on 20th January, 2006 when the plaintiff along with the property dealer approached the defendant at his residence in order to make the balance payment of Rs.50.00 lakh in terms of the agreement dated 5th October, 2005, the defendant deliberately refused to meet the plaintiff. This resulted in issuance of a notice dated 20th January, 2006 by the plaintiff to the defendant calling upon her to perform her part of the contract. Since this was not done, the plaintiff was constrained to file the present suit.

3. The defendant has filed her written statement and taken various pleas apart from the plea that the bayana receipt/agreement were executed on the same day, one for the plaintiff and the other for the defendant. It is alleged that the plaintiff has colluded with one, Raju and got the documents forged, fabricated and played fraud upon the defendant. It is alleged that the cheque which was actually issued to the defendant was drawn on Nanital Bank Ltd. from the account of one, Dharam Pal Malik who was not a party to the agreement. On the basis of these facts, the suit has been contested by the defendant.
4. This Court after completion of pleadings and admission/denials framed issues on 12th August, 2008 and thereafter directed the plaintiff to file affidavit by way of evidence in support of his case. The plaintiff in support of his case has examined himself as PW-1 after filing of the affidavit. However, the cross examination of the PW-1 i.e. the plaintiff could not be completed and the same was deferred on 26th of February, 2010. The further cross examination of the witnesses was yet to be completed. It is at this stage that the defendant has filed an application under Order VI Rule 17 proviso bearing IA No.2182/2010 seeking amendment of the written statement.
5. I have heard the learned counsel for the defendant and perused the record.

6. The main contention which has been advanced by the learned counsel for the defendant seeking amendment of the written statement is two-fold. First, it is alleged by him that after filing of the written statement, the defendant while surfing on the net has learnt that the plaintiff has been involved in number of shady property, deals as a consequence of which number of FIRs have been registered against him, details of which are mentioned in the application in para 4. The defendant is also alleging in the amendment application that a fraud has been played upon her as a consequence of which she wants to give the specific details of the fraud. The learned counsel for the defendant has relied upon the case title ***Bishnudeo Narain and Anr. Vs. Seogeni Rai and Jagernath*** AIR 1951 SC 280.

7. So far as the judgment which has been relied upon by the defendant is concerned, it has no application to the facts of the present case. Order VI Rule 4 CPC reads as under :

“4. Particulars to be given where necessary. – In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

8. A perusal of the aforesaid rule will clearly show that in cases where a party is alleging that fraud has been played, the necessary details by way of particulars and the manner

in which the fraud was committed have to be necessarily given. This is a fact which was specially within the knowledge of the defendant even at the time when the written statement was filed earlier.

9. The Proviso to Order VI Rule 17 specifically says that once the trial has started, the Court will not permit any amendment of the pleadings unless and until the party concerned satisfies the Court that despite having observed the due diligence, the fact which is sought to be incorporated was not within its knowledge. In the instant case, admittedly the defendant has neither alleged nor prima facie established that the facts which she wants to place on record by way of fraud having been played on her was not within her knowledge despite due diligence. On the contrary, there is an averment made by the defendant herself that fraud was played on her by the plaintiff in collusion with one Raju, property dealer which clearly shows that all the details pertaining to the fraud were within her knowledge and therefore at this late stage, she cannot be permitted to amend her written statement.
10. The second part of the amendment application pertains to where the defendant is wanting to incorporate in the written statement the factum with regard to the registration of the various cases which show that the plaintiff allegedly has been involved in number of dubious property transactions on account of which various FIRs have been

registered in different police stations against him. This is a fact which obviously has been learnt by the defendant after filing of the written statement. It has been alleged by the defendant that these facts came to her knowledge when she was surfing on the net.

11. Order VI Rule 17 Proviso clearly lays down that once the trial has begun, then as a matter of rule the Courts will not permit the amendment of the pleadings unless and until the case falls in proviso where due diligence is shown and despite the said due diligence the fact in question was not within the knowledge of the defendant. Although the Courts have been liberal in permitting amendment but after the amendment in Order VI Rule 17 CPC in 2002, the amendment to the pleadings has been somewhat stringent. The amendment apart from the fact that it must fall within the proviso of Order VI Rule 17 must also be germane to the real fact in issue involved in a particular case. The issue involved in the instant case is as to whether the plaintiff is entitled to a declaration of decree of specific performance in respect of a property owned by the defendant when the latter is purported to have executed an agreement to sell by way of receipt for a specified consideration. If that be so, the question of character of the plaintiff is not an issue in the instant case. Section 52 of the Evidence Act, 1872 specifically lays down that no evidence as to the character can be produced by a party

unless and until the character of a person is itself in issue so as to determine the quantum of damage, meaning thereby that no evidence with regard to the character can be adduced in a civil case unless and until it is relevant for the purpose of determining the damages on account of defamation case. Therefore, this portion of the amendment which is sought by the defendant is not germane and relevant to the 'fact in issue' in the instant case.

12. In addition to this, admittedly no amendment can be permitted on this score when the trial has already started. As has been noticed hereinabove, the plaintiff has already tendered his affidavit by way of evidence and he has been subjected to extensive cross examination by the defendant which could not be completed probably for want of time. The said cross examination was deferred on 26th February, 2010. It is only after that particular date that the present application has been filed by the defendant with a view to seek incorporation of the aforesaid facts.
13. I am of the view that the defendant has deliberately chosen to file this application only with a view to delay disposal of the case. The defendant is still at liberty to cross examine the plaintiff as regards his character so far as it is going to demolish his testimony, but no amendment of the written statement can be permitted at this stage so as to incorporate averments pertaining to the character of the plaintiff, especially when this is not a suit for damages.

14. For the reasons mentioned above, the amendment application is totally frivolous and dilatory in nature and accordingly the same is dismissed with cost of Rs.10,000/-.

V.K. SHALI, J.

May 10, 2010
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