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

+ C.R.P. 237/2017

SARITA AGRAWAL & ANR

..... Petitioners

Through: Mr. Shailendra Bhardwaj, Mrs.
Aroma S. Bhardwaj, Mr. Nishant &
Mr. Rakesh K. Sharma, Advs.

Versus

RAKESH JAIN & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.11.2017**

CM No.39350/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. 237/2017 & CM No.39351/2017 (for stay)

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 16th August, 2017 in CS No.6884/2016 of the Court of Additional District Judge-01 (ADJ), South District, Saket Courts, New Delhi] allowing the application of the respondent no.1 / plaintiff for amendment of the plaint, post framing of issues in the suit and at the stage of evidence of the respondent no.1 / plaintiff.
4. The counsel for the petitioners / defendants no.4 &5, after failing to convince this Court about the merit in the challenge to the amendment allowed, confines the relief in this petition to non-grant of opportunity to the petitioners / defendants no.4&5 to file written statements to the amended plaint and to deletion of two issues vide the same order dated 16th August, 2017.

5. The impugned order, after allowing the amendment and taking the amended plaint on record, records that “the written statements have already been filed” and lists the suit for arguments on the application under Order VII Rule 14 of the CPC on 22nd August, 2017. The counsel for the petitioners / defendants no.4&5, on enquiry states that the application under Order VII Rule 14 of the CPC is of the respondent no.1 / plaintiff.

6. The order dated 16th August, 2017 does not show that the petitioners / defendants No.4&5 having sought any opportunity to file the written statement to the amended plaint. Rather, the impugned order dated 16th August, 2017 shows that neither the petitioners / defendants no.4&5 themselves appeared nor their advocate appeared before the learned ADJ on that date. However, the counsel for the petitioners / defendants no.4&5 has drawn attention to one of his objections recorded and states that he was present but his presence is not recorded in the appearance of parties / counsels noted in the order.

7. I have enquired from the counsel for the petitioners / defendants no.4&5 whether they, after 16th August, 2017, sought any opportunity to file written statement to the amended plaint.

8. The answer is in the negative.

9. There is no need to entertain this petition only for the said purpose and said aspect is taken care of by observing that the petitioners / defendants no.4&5 are at liberty to file an application before the ADJ along with their written statement to the amended plaint, for the same to be taken on record. The said application if filed, will be considered by the learned ADJ in accordance with law.

10. As far as the grievance with respect to deletion of two of the issues is concerned, the order dated 16th August, 2017 records that the said issues have been deleted “by consensus of the parties”. No challenge can be made to a consent order.

11. The counsel for the petitioners / defendants no.4&5 though contends that the consent of the petitioners / defendants no.4&5 recorded was not given but again on enquiry states that no application in this respect also has been filed after 16th August, 2017.

12. If any error has crept in the order, it is the duty of the litigant / counsel to immediately apply for correction thereof.

13. The counsel for the petitioners / defendants no.4&5 then states that he will make an application in this regard also before the learned ADJ.

14. Before parting, I may record that the remedy of Section 115 of the CPC invoked is also misconceived inasmuch as the said remedy as per proviso to sub-Section (1) thereof is not available. However, on oral request of the counsel for the petitioners / defendants no.4&5, the matter has been considered as under Article 227 of the Constitution of India.

15. The petition is disposed of in terms of above.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 01, 2017

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