

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

+ CM(M) 2/2015 and CM No.43/2014 (Stay)

% Reserved on: 7th January, 2015

Decided on: 9th January, 2015

M/S MOTI MAHAL DELUX-II

..... Petitioner

Through: Mr. Rajesh Yadav, Ms. Ruchira Arora
and Mr. Dhananjay Mehlawat,
Advocates.

versus

KIRAN DUTTA & ORS

..... Respondents

Through: Mr. Amitabh Chaturvedi and Ms. Ekta
Sukhramani, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The grievance of the Petitioner to the order dated 3rd December, 2014 is to the extent that while allowing the amendment application and taking the amended petition on record the Rent Controller granted liberty to the Respondents to withdraw the relief of eviction on the ground of the bona fide requirement and file a fresh petition on the said ground.

2. Learned counsel for the Petitioner contends that the Respondents herein filed a composite petition seeking the relief of eviction of tenanted premises under Section 14 (1) (a) and 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short the 'DRC Act'). Thereafter the Respondents filed an application under Order VI Rule 17 CPC seeking amendment to the petition by withdrawing the prayer under Section 14 (1) (a) DRC Act. During the pendency of the said application the Respondents filed another application under Order VI Rule 17 CPC seeking withdrawal of the claim in the petition

on the ground of bona fide requirement, that is, under Section 14 (1) (e) DRC Act. When the matter came up for hearing before the learned Rent Controller on 3rd December, 2014 the Respondents withdrew their earlier application under Order VI Rule 17 CPC filed on 2nd July, 2014 and pressed the second application confining the relief in the eviction petition under Section 14 (1) (a) DRC Act. According to learned counsel for the Petitioner by the amendment application the Respondent sought permission under Order XXIII Rule 1 CPC, that is, withdraw/abandon the claim, though simultaneously in the prayer Respondents also sought liberty to file separate application under Section 14 (1) proviso (e) of the DRC Act. Relying upon Order XXIII Rule 1 CPC it is contended that having abandoned the claim no liberty could have been granted by the learned Rent Controller to the Respondents to file a fresh petition under Section 14 (1) proviso (e) of the DRC Act. In the alternative it is also contended that neither any sufficient cause was made out in the application seeking amendment, for filing a fresh petition on the same cause of action nor did the learned Rent Controller return a finding qua sufficiency of cause while granting the liberty to file a fresh petition. Reliance is placed on K.S. Bhoopathy and others vs. Kokila and others, 2000 (5) SCC 458; Vidyabai and others vs. Padmalatha and another, 2009 (2) SCC 409; Kailash vs. Nanhku and others, 2005 (4) SCC 480; Arvindkumar Ratilal Punatar and others vs. Yogeshkumar Karilal Shah, 1999 AIHC 3464 and Just Lifestyle Pvt. Ltd. vs. Advance Magazine Publishers Inc. and another, 2013 (4) R.A.J. 670 (Del) DB. Relying upon Abdul Ghaffoor vs. Abdul Rahman, AIR 1951 All 845 (FB) it is contended that the words ‘sufficient ground’ in order XXIII Rule 1 (3) should be read as *ejusdem generis* to the defect to be cured. It is further contended that the

trial having commenced the learned Rent Controller could not have permitted amendment of the petition. The Petitioner has not pleaded that there is a formal defect in the petition which needed to be cured. There is no bar in the DRC Act for filing eviction petition on the composite grounds. A right had accrued to the Petitioner as leave to defend was not required. Though the Petitioner could have abandoned the claim but the Court was not entitled to grant leave to the Respondent, hence the impugned order granting liberty to Respondents to file the fresh petition under Section 14 (1) (e) DRC Act.

3. Per contra learned counsel for the Respondents contends that the Respondent in his amendment application has clearly made out sufficient cause of speedy adjudication while seeking the amendment and liberty to file a fresh petition under Section 14 (1) proviso (e) of the DRC Act. Even the learned Rent Controller vide the impugned order has arrived at the satisfaction regarding sufficiency of cause. Hence the two decisions relied upon, that is, K.S. Bhoopathy and Arvindkumar Ratilal Punatar (supra) have no application to the facts of the case wherein the relief was granted only on the ground that the Defendant therein would not be prejudiced by grant of permission to withdraw the claim. Relying on Sushil Kumar Jain vs. Manoj Kumar AIR 2009 SC 2544 and the decision of this Court dated 13th September, 2011 in I.A. No.4452/2011 in CS (OS) No.800/2006 titled as Rajesh Sharma vs. Krishan Pal and another it is contended that unless the witness either enters the witness box for his examination-in-chief or tenders his evidence by way of affidavit in examination-in-chief, it cannot be said that the trial has commenced. The trial having not commenced the amendment to the eviction was rightly allowed by the Rent Controller. No

right has accrued to the Petitioner as urged. By directions to Petitioner to file the written statement no vested right has accrued to the Petitioner. A vested right is a permanent right. Relying upon M/s Ambalal Sarabhai Enterprises Ltd. vs. M/s Amrit Lal & Co. and another, 2001 (8) SCC 397 it is contended that the DRC Act only gives a protective right and not a vested right. Hence the present petition being devoid of merit be dismissed.

4. Heard learned counsel for the parties.

5. A brief exposition of the facts is that the Respondents herein filed Eviction Petition No.21/2013 before the Rent Controller, Saket Courts, Delhi seeking eviction of the Petitioner herein under Section 14 (1) Proviso (a) and (e) of the DRC Act. During the pendency of the said petition objection was taken by the Petitioner that such a composite petition under the aforesaid two provisions was not maintainable which objection was refuted by the Respondents. Without prejudice to the contention, the Respondents in reply to the leave to defend application also prayed that if the Court was of the opinion that the composite petition was not maintainable then the eviction petition be treated as a petition under Section 14 (1) (e) of the DRC Act and leave be granted to the partners to file a separate petition under Section 14 (1) (a) of the DRC Act. The Respondents herein had earlier challenged the order dated 31st January, 2014 of the learned ARC wherein it was held that the summary procedure as contemplated under Section 25 (B) of the DRC Act cannot be applied in the present case as the eviction petition was a composite petition under Sections 14 (1) (a) and 14 (1) (e) of the DRC Act and thus there was no requirement of filing leave to defend application. On hearing the parties this Court vide its order dated 27th March, 2014 dismissed the petition of the Respondents on the following grounds:

“8. Admittedly, no such review application seeking correction/modification of the court’s order was preferred. Furthermore, there is no document on the record to evidence that an oral request had been made to the Court to treat the petition only under Section 14 (1)(e) and not as composite one read with section 14(1) (a). It would also be an untenable argument and proposition that the Additional Rent Controller should read the averments in minutiae, and even though the dropping of the Section 14(1)(a) ground was conditional – as averred in the reply to the leave to defend, and pass an order to the effect which has now been sought in this petition. This Court is of the view that if the petitioners wanted the proceedings to be in accordance with section 14(1)(e) then an appropriate procedure should have been adopted, specifically seeking amendment of the eviction petition. Neither has that procedure been adopted nor have the petitioners preferred to seek correction or modification of the impugned order, which they claim is erroneous as reflecting the alleged arguments and submissions made before it for treating the petition only under section 14(1)(e) of the Act.

9. In view of the preceding discussion, this Court finds no reason to interfere with the impugned order. Accordingly, the petition is dismissed as being without merit.

6. Faced with this situation the Respondents filed the first application under Order VI Rule 17 CPC on 2nd July, 2014 seeking permission to continue with the petition under Section 14 (1) (e) and deletion of the prayer for relief under Section 14 (1) (a) DRC Act. Thereafter the Respondents filed a second application under Order VI Rule 17 CPC seeking deletion of prayer under Section 14 (1) (e) DRC Act and to continue the petition under Section 14 (1) (a) DRC Act. When the two applications came up for hearing on 3rd December, 2014 the Respondents withdrew the first application and confined its relief to the second application under Order VI Rule 17 CPC,

that is, to continue the eviction petition for relief under Section 14 (1) (a) DRC Act. Since the averments in this application are bone of contention hence it would be relevant to note certain paragraphs thereof.

“ 1. ...

2. ...

3. ...

10. However, the Petitioners are desirous of withdrawing the earlier application dated 01.07.2014 and file a fresh amended application seeking to make the following amendments in the instant petition:

(i) Petition filed under the provisions of Section 14 (1) proviso (a) and (e) of the Delhi Rent Control Act, 1958 mentioned at page 1 of the instant petition may be read as follows:

“Application for eviction of tenant under section 14 (1) proviso (a) of the Delhi Rent Control Act, 1958”

(ii) Clause (ii) of Para 18 (a) at page 11-12 should be deleted being: -

(ii) Bonafide Use: The tenanted Portion is required for bonafide use of the landladies. The landladies/co-owners to start retail trading operations from the ground floor. Therefore, the tenant is required to vacate the Tenanted Portion under Section 14 (1) (e) of the DRC Act.

From the ground on which the eviction of the tenant is sought.

(iii) Clause (i) of para 18 (b) at page 12, being: -

“(i) Non-payment of rent: Although notice for non-payment of rent by the tenant under Section 14 (1) (a) of the DRC Act is not statutorily required to be given by the landladies however, a notice dated 08.07.2013 was served upon the tenant calling upon to pay the rent from April, 2013 onwards. True copies of the said notice dated 08.07.2013 along with its postal receipts are attached herewith as “Annexure A-3 Colly”.

Should be changed and now read as:-

“(i) Non-payment of rent: Although notice for non-payment of rent by the tenant under Section 14 (1) (a) of the DRC Act is not statutorily required to be given by the landladies however, a notice dated 08.07.2013 was served upon the tenant calling upon to pay the rent from April, 2013 onwards. True copies of the said notice dated 08.07.2013 along with its postal receipts are attached herewith as “Annexure A-3 Colly”. Thereafter, the Petitioner No.3 herein received (i) a letter dated 03.03.2014 along with the demand draft bearing no.250960 dated 03.03.2014 drawn upon Bank of Baroda in her favour for an amount of Rs.11000/- (Rupees Eleven Thousand Only) as rent with respect to the Tenanted Premises for a the period of April, 2013 to February, 2014; (ii) another letter dated 04.03.2014 clarifying that there was a shortfall of an amount of Rs.1100/- in respect of the rent for the period of April, 2013 to February, 2014 while sending the earlier demand draft bearing no.250960 along with the letter dated 03.03.2014 and enclosing along with it another demand draft bearing no. 827184 dated 04.03.2014 drawn upon State Bank of India in her favour for an amount of Rs.1100/- (Rupees One

Thousand One Hundred Only) as balance rent for the period of April, 2013 to February, 2014 and (iii) another letter dated 17.05.2014 along with the demand draft bearing no.053743 dated 16.05.2014 drawn upon Bank of Baroda in her favour for an amount of Rs.3300/- (Rupees Thirty Three Hundred Only) as rent for the period of March, 2014 to May, 2014 in respect of the Tenanted Premises. True copy of the letters dated 03.03.2014, 04.03.2014 and 17.05.2014 along with their respective Demand Drafts are being annexed herewith and marked as **Annexure A-4 Colly**. However, the Petitioners replied to the said letters dated 03.03.2014, 04.03.2014 and 17.05.2014 vide their letter dated 26.06.2014 thereby stating that the Petitioners cannot accept the Demand Drafts during the pendency of the present proceedings and even otherwise, the Demand Drafts were sent only in favour of the Petitioner No.3 when the Tenanted Premises was being jointly owned by the Petitioners and therefore, returned the Demand Drafts along with their letter dated 26.06.2014. True copy of the letter dated 26.06.2014 is being annexed herewith and marked as **Annexure A-5 Colly**. Thereafter, the Petitioner No.3 again received a letter dated 13.09.2014 from the Respondent alongwith three (3) Demand Drafts bearing (i) no.141296 for an amount of Rs.7920.00; (ii) no.141297 for an amount of Rs.7920.00; and (iii) no.141298 for an amount of Rs.3960.00, all dated 13.09.2014 and drawn upon Bank of Baroda in favour of the Petitioner Nos. 1, 2 and 3 receptively, allegedly towards rent for the period of April, 2013 to 30th September, 2014 at the rate of Rs.1100.00 per month (all the abovementioned demand drafts are hereinbefore and hereinafter collectively referred to as “the Demand Drafts”) in respect of the Tenanted

Premises. However, the counsels of the Petitioners replied to the said letter dated 13.09.2014 vide letter dated 24.09.2014 thereby stating that the Petitioners cannot accept the Demand Drafts during the pendency of the present proceedings and, therefore, returned the Demand Drafts along with their letter dated 24.09.2014. True copy of the letter dated 24.09.2014 is being annexed herewith and marked as Annexure A-6 Colly.

- (iv) *Clause (ii) of Para 18 (b) at page 12, should be deleted being:*

“(ii) Bonafide Use: Notice for eviction of the Tenanted Portion by the Tenant on account of use of the same by the landladies for their bonafide use is not statutorily required to be given by the landladies. Hence, no such notice has been served upon the Tenant;”

- (v) *Clause (ii) of Para 19 (b) at page 16 of the instant petition should be deleted, being: -*

“(ii) The landlady/Petitioner No.3 on behalf of herself as well as the other Petitioners has made requests to the Tenant to-

(b) Vacate the tenanted portion to enable the landladies for their bonafide use of carrying out business.”

- (vi) *Clause (iii), (iv), (v), (vi), (vii); and (viii) (a) to (d) of Para 19 at pages 17-20 of the instant petition should be deleted, being: -*

“(iii) Petitioners want to start retail trading operations from the said Premises including the Tenanted Portion. The Tenanted Portion is ideal for launching retail-trading operations as the M-Block Market is high street

retail and attracts considerable footfall and boasts of many reputed brands.

(iv) Petitioner No.1 is not gainfully employed but her husband has retired from Indian Army in the year 2003 and is running a small business of his own. Petitioner No.1 has a son Arjun Dutta (aged 26 years), who is studying and her daughter Anisha Dutta (aged 22 years) is also a student. Both the children are major and will soon venture out to look for business opportunities.

(v) Petitioner No.2, along with her husband Kamal Dutt, has been running retail trading operations in Chicago, IL, USA since 1979 selling branded men's clothing, shoes and accessories. They have considerable retail trading experience in the said business. They wish to expand their retail operations to India. Petitioner No.2's son Adhiraj Dutt (aged 28 years) is married and is working in the US. Their daughter Reema Dutt (Aged 25 years) is studying in the US. Foreign Direct Investment (FDI) in retail trading is permitted in India, which allows Petitioner No.2 to bring foreign capital for the proposed retail trading operations.

(vi) Petitioner No.3 is also not gainfully employed and, is, therefore, keen to collaborate in a joint venture jointly promoted by co-owners viz., Petitioners herein involving retail operations from the said Premises.

(vii) As retail rentals in Delhi are one of the highest in the world and prohibitive retail rentals in Delhi make retail business unviable, the Petitioners herein require the Tenanted Portion of the said Premises to begin retail trading operations. Since they own the said Premises they will avoid huge rental costs and can aim at profitable operations for a decent livelihood. The co-owners viz., the Petitioners herein have not only agreed to come together to launch the retail trading operations

but they also bring in their respective strengths to the proposed joint venture inasmuch as Petitioner No.2, along with her husband, will bring 30 years of valuable experience and expertise in retail trading, securing brand-licensing arrangements and international sourcing. However, as the Petitioner No.2 is presently based abroad, the Petitioners/co-owners are dependent on each other for carrying out retail trading operations from the said Premises.

(viii) The Petitioners do not have any other reasonably suitable accommodation for launch of the said retail trading operations-

- (a) The Petitioners have a small built up portion in the rear side of the said Premises equal to 214 sq. ft. approximately. The small size of this built-up area makes it wholly unsuitable for the proposed retail trading operations. Also being next to a meat shop, this portion on the rear side lacks visual appeal for any retail store;*
- (b) Petitioner Nos.1 and 2 do not own any other retail/commercial property in India;*
- (c) Petitioner No.3 has a 50% undivided share in a commercial property situate at 29, Community Centre, Basant Lok, Vasant Vihar, New Delhi-110 057 which is fully leased out to corporate clients. The other 50% undivided share in this property is owned by one Mr. Satpal Gulati who is not related to either Petitioners or their immediate family members or relatives;*
- (d) Each of the Petitioners jointly own, together with other unrelated owners, undivided*

share aggregating to 3/8th share (Petitioner No. 1- 13/80th share, Petitioner No. 2-13/80th share and Petitioner No.3- 4/80th share) in a 2017 sq. yds vacant plot of land situated in Lal Quarters, Krishna Nagar, Delhi which being a co-owned plot of land cannot be used for any activity much less any commercial activity.”

(vii) Clause 19 (ix) at pages 20-21 of the instant petition should be renumbered as 19 (iii) being:

“(ix) Revision of rent: The rent of the Tenanted Portion has not been increased and/or revised for past 35 (thirty-five) years viz., from the date of occupation of the tenanted portion i.e. 8.11.1977 either in terms of Section 6A of the DRC Act or otherwise and right from the inception of the tenancy, the rent has always been Rs.1,100.00 (Rupees One Thousand and One Hundred Only) per month.”

11. That the abovestated proposed amendments are sought to be brought on record, by filing the proposed amended petition accompanying this application, in the interest of justice and same are necessary for speedy adjudication of disputes. The aforesaid proposed amendments are sought to be made at this stage for the purpose of speedy adjudication of the disputes between the Petitioners-landlords and the Respondent –tenant and moreover, amendment of the earlier petition by confining the same to the relief based on ground of ‘non-payment of rent’ with the liberty to file a separate petition on the grounds of ‘bona fide requirement of landlord’ is legally permissible as the bona fide requirement of a landlord is a recurring cause of action. The amendment regarding documents annexed as Annexure A-4, Annexure A-5 Colly, and Annexure A-6 Colly are being made to bring on record subsequent facts between filing the present petition on 07.08.2013 and the date of filing this

amended application on 30.10.2014. That there has been no undue delay in filing the amendment, no inconsistent cause of action is being intended, no vested or accrued legal right of the Respondents is prejudicially affected and the said amendment does not prejudice the Respondents in any manner whatsoever. In fact, the proposed amendment is bona fide and does not take away any admission and/or cause any grave injustice to the Respondent, on the contrary, grave injustice would be caused to Petitioners who would have to undergo trial in spite of limiting the claim to seeking eviction on the ground of bona fide requirement. Further, the proposed amendment has been filed before commencement of trial inasmuch as no issues have been framed and also the Petitioners have not commenced leading of their evidence as neither affidavit-in-evidence nor oral examination-in-chief of any of their witnesses have been carried out till date. It is further submitted that the proposed amendment only brings on record the subsequent events and does not change the substance and/or cause of action of the petition and nor does it change the nature of the petition inasmuch as the petition still remains a petition for eviction and the proposed amendment only bifurcates the petition into two separate petitions on the basis of the reason for which eviction is being sought which is also permissible under Order 23 Rule 1 CPC as the Petitioner is dominus litus and can withdraw/abandon any basis of its claim. (Emphasis supplied)

7. The prayers in the application are:

- “a. allow the amendments sought in para 10 of the instant application and direct that the accompanying amended petition (Annexure I) may be taken on record;*
- b. allow the petitioner to file separate application under Section 14 (1) proviso (e) of the Delhi Rent Control Act, 1958; and*

- c. *grant any such relief (s) which this Hon'ble Court may deem fit and proper under the circumstances of the instant case."*

8. Order XXIII Rule 1, 2 and 3 of CPC reads as under:

1. Withdrawal of suit or abandonment of part of claim.- (1)
At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

- (a) that a suit must fail by reason of some formal defect, or*
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim,*

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff,—

- (a) *abandons any suit or part of claim under sub-rule (1), or*
- (b) *withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),*

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]

9. Learned counsel for the Petitioner relying upon the last lines of Para-11 as noted above wherein the Respondents claims that he is the dominus litus and can withdraw/abandon any basis of its claim under Order XXIII Rule 1 CPC contends that the same is a case of withdrawal/abandonment of the claim and thus no liberty could be granted by the learned Trial Court. The said pleadings in Para-11 of the application under Order VI Rule 17 CPC cannot be read in isolation. The Respondents in the prayer have sought leave to file a separate application under Section 14 (1) proviso (e) of the DRC Act. Merely noting the ground that the Respondents being dominus litus could withdraw/abandon the claim would not amount to nullify the prayer sought in the application.

10. The contention of learned counsel for the Petitioner that sufficient ground under Order XXIII Rule 1 (3) (b) CPC should be read as *ejusdem generis* to formal defect as noted in Sub-clause (a) is misconceived. The

decision by the Full Bench of the Allahabad High Court was rendered wherein the words ‘other sufficient grounds’ was used before the amendment. The Full Bench of Allahabad High Court answered the question that the words ‘sufficient ground’ in Rule 1 (2) (b) of Order XXIII of the Code covered grounds analogous to those mentioned in Rule 1 (2) (a). Subsequently, in Duryodhan Jena vs. Satyabadi Samal and others, AIR 1986 Orissa 58 relying on the earlier decisions the Court came to the conclusion that there is no justification for restricting the meaning of expression “other sufficient grounds” in Order XXIII Rule 1 (2) (b) only to formal defects or those analogous thereto. It was held that the term all ‘other grounds’ has to be given a wide connotation and attempt to give a restricted meaning to it has been repelled.

11. Be that as it may it is not necessary for this Court to go further into this issue for the reason in the present case though a composite application under the DRC Act on more than one grounds was filed however, the procedure for an eviction petition under Section 14 (1) (a) and 14 (1) (e) DRC Act being different and technical, to avoid the said complexity in case the Petitioner wants to withdraw the claim on one ground the same would be in the nature of a defect which would be technical in nature and a sufficient ground analogous to formal defect. Further the cause of action for eviction on the bona fide ground, that is, under Section 14 (1) (e) DRC Act is a recurring cause of action and even without seeking the liberty the Petitioner is at liberty to refile the petition on bona fide requirement again. Hon’ble Supreme Court N.R. Narayan Swamy vs. B. Francis Jagan, 2001 (6) SCC 473 held:

“6. In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed. [K.S.Sunderraju Chettair vs. M.R.Ramachandra Naidu (SCC para 10) and Surajnul vs . Radhe Shyam]”

12. This being the position no illegality can be imputed to the impugned order granting liberty to the Respondents to file a fresh petition for eviction under Section 14 (1) (e) of the DRC Act. As noted in M/s Ambalal Sarabhai Enterprises Ltd. (Supra) a tenant has no vested right under the Rent Act and only the protected right, thus the contention that by following the procedure of filing the written statement and proceeding with evidence a vested right has accrued to the Petitioner is a contention liable to be rejected.

13. Learned counsel for the Petitioner urges that the trial having commenced no amendment of the petition should have been allowed. The Petitioner urges that once issues are framed and the matter is listed for Plaintiff's evidence the trial begins whereas the Respondents contend that only when the Plaintiff enters into the witness box and examines himself or tenders his evidence by way of affidavit, the trial commences. Order VI Rule 17 CPC does not prohibit amendment once trial has started. It only

provides that the party should show that despite due diligence the party could not have raised the matter before commencement of trial. In the present case on the Respondent filing a composite application since the learned ARC vide order dated 31st January, 2014 held that no leave to defend was required a petition was filed challenging the same before this Court which was dismissed vide order dated 27th March, 2014 whereafter the Respondents filed the first application under Order VI Rule 17 CPC on 2nd July, 2014 and before the same could be adjudicated the second application under Order VI Rule 17 CPC on 30th October, 2014 filed. Though the written statement had been filed by the Petitioner, however, no evidence by way of affidavit had been filed by the Respondents. Hence it cannot be said that the application under Order VI Rule 17 CPC was filed belatedly and ought not to have been entertained by the learned Trial Court as no due diligence was shown.

14. Consequently, I find no infirmity in the impugned judgment. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2015
‘vn’