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

\+ **CM(M) 341/2015**

% Decided on: 21st April, 2015

M/S PAVIK LIFESTYLE PVT LTD ..... Petitioner
Through: Mr. Girdhar Govind with Mr. Sharat Kapoor, Advs.

versus

MADHVI SINGH & ANR ..... Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM 7249/2015 (Exemption)

Allowed, subject to all just exceptions.

CM 7251/2015 (Delay)

For the reasons stated in the application, the delay of six days in refiling the petition is condoned.

Application is disposed of.

CM(M) 341/2015 & CM 7250/2015 (stay)

1. Aggrieved by the order dated 27th November 2014 whereby application of the petitioner/defendant seeking review of the order dated 26th September, 2014 dismissing two applications of the petitioner/defendant under Order 6 Rule 17 CPC and under Section 45 of the Evidence Act were dismissed, the petitioner prefers the present petition.

2. A suit was filed by the respondents/plaintiffs seeking recovery of possession etc. from the petitioner/defendant. In the said suit, defence taken

by the petitioner was that at the time of inception of the tenancy i.e. 1st April, 2001 the petitioner/defendant had paid a sum of Rs.2,50,000/- to the plaintiff No.2 in cash on account of interest free security refundable at the time of surrender of tenancy to the petitioner/defendant. It was also agreed that tenancy was for an indefinite period and shall be at the will of the tenant who only had the right to vacate the suit premises as and when it desires. It was further stated that the plaintiffs/respondents had no right of eviction against the petitioner/defendant which is corroborated by the fact that the plaintiff/defendant received additional sum from the petitioner which is in the nature and analogues to the concept of 'Pugree'.

3. After both the parties led their evidence, the petitioner/defendant filed an application under Order 6 Rule 17 CPC seeking to amend and add that the entitlement of defendant is fortified and corroborated by the factum of plaintiffs having received an additional sum from the petitioner/defendant which is in the nature and analogues to the concept of 'Pugree'. For the said reason there was no enhancement of user charges for over the last decades. This application was dismissed vide the impugned order.

4. Learned counsel for the petitioner before this Court reiterates the same pleas and relies upon *Andhra Bank Vs. ABN Amro Bank & Ors. AIR 2007 SC 2511; Mangal Das Sant Ram Gauba Vs. Union of India, AIR 1973 Del 96; Rajesh Kumar Aggarwal Vs. K.K. Modi & Ors. AIR 2006 SC 1647; Raghu Tilak D. John Vs. Rayathan & Ors. AIR 2001 SC 699; Stage Jagdish and Ors. Vs. Har Sarup AIR 1978 Delhi 233; Ramachandra Sakhram Mahajan vs. Damodar Trimbak Tanksale, 2007 (6) SCC 737; Reevajeedu Builders and Developers vs. Narayana Swami and Sons, 2009 (10) SCC 84; Sunshine*

India (P) Ltd. Vs. Bhai Manjit Singh (HUF) 202 (2013) DLT 777 and *Neena Khanna Vs. Peepee Publishers and Distilleries (P) Ltd. (2010) 167 DLT 247.*

5. I have heard learned counsel for the petitioner.

6. Order 6 Rule 17 CPC permits the Court to amend the pleadings at any stage of the proceedings if the same are necessary for the purpose of determining the real question 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 commencement of the Trial.

7. As noted above, the application for seeking amendment of the plaint was filed after the evidence of both the parties had concluded and the matter was at the stage of final arguments. The plea of the petitioner/defendant is not that despite due diligence these facts were not in his knowledge. Rather it is the case of the petitioner/defendant that these facts have already been pleaded in the original written statement. The petitioner's application under Order 14 Rule 5 CPC for framing of additional issue has already been dismissed on 30th September, 2013 and the said order has attained finality.

8. The petitioner/defendant in the written statement has already taken the pleas i.e. the sum of Rs.2,50,000/- was given as interest free refundable security and that the same was analogous as 'Pugree'. The facts having been already mentioned in the written statement there was no need of amendment to the written statement. Further the said facts are not subsequent facts or that even with due diligence the petitioner could not have raised the matter before commencement of trial.

9. The decisions relied upon by learned counsel for the petitioner as noted above have no application to the facts of the present case. In *Sunshine India (P) Ltd., Andhra Bank and Mangal Das Sant Ram Gauba* (supra) the Court held that the merits of the amendment should not be gone into. Certainly, learned Trial Court while rejecting the application did not go into the merits of the amendments sought. In *Rajesh Kumar Aggarwal and Neena Khanna* (supra) it was held that if the amendment is necessary to decide the real dispute between the parties, it should be allowed. Further in *Raghu Tilak D. John* (supra) the Court permitted the amendment by incorporating subsequent events. There is no dispute to the proposition that if the amendment is essential to decide the real dispute then it can be allowed even belatedly while compensating the opposite party. However, as noted above the amendments sought by the petitioner are neither subsequent events nor essential to the real dispute between the parties and the foundation of the amendment has already been laid in the written statement. Thus the Petitioner cannot be permitted to re-agitate the same issue over and over again. The petitioner/defendant cannot also be permitted to delay the trial.

10. I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

April 21, 2015
'v mittal'