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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 58/2015 and CM No. 7274/2015 (Stay)

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Decided on: 21st April, 2015

HARSHARAN SINGH

..... Petitioner

Through: Mr. M.S. Saini, Advocate.

versus

SURINDER KAUR NARULA & ORS

..... Respondents

Through: Mr. Manjeet Singh Bhamra and
Ms. Nidhi Gupta, Advocates for
Respondent Nos. 1, 2 and 3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 16th March, 2015 whereby the applications under Order VI Rule 17 CPC and Section 5 of the Limitation Act filed by the Petitioner/Plaintiff seeking amendment of the plaint and condonation of delay in filing the application for amendment were dismissed, the Petitioner Harsharan Singh prefers the present petition.
2. Sardar Harsharan Singh filed Suit No.275 of 2014 on 23rd April, 2011 seeking cancellation of Agreement to Sell, General Power of Attorney, affidavit and possession letter dated 6th February, 1997. A joint written statement was filed by the Defendant Nos. 1, 7 and 8 on 11th February, 2013 stating that the documents dated 6th February, 1997 were taken by the Petitioner/Plaintiff and he executed another bunch of documents in favour of Defendant Nos. 1 and 2 on 22nd June, 1999 and 26th March, 2001. On the basis of the written statement it was thus prayed that the Petitioner/Plaintiff

wants to incorporate the relief of declaration and cancellation of Agreement to Sell etc. dated 22nd June, 1999 and 26th March, 2001.

3. In reply to the application the Respondents/Defendants stated that on filing of the suit on 23rd April, 2011 they filed an application under Order VII Rule 11 CPC along with the documents dated 22nd June, 1999 and 26th March, 2001 on 7th September, 2011. Thus the Petitioner/Plaintiff had the knowledge of these documents on 7th September, 2011 even if not prior thereto and the application seeking amendment along with the application for condonation of delay are required to be dismissed as time period prescribed for the relief of declaration/cancellation of documents is three years from the date of knowledge. The date of knowledge to the Plaintiff Harsharan Singh atleast being from 7th September, 2011 the suit ought to have been filed within three years from the said date. Thus the Petitioner/Plaintiff cannot be allowed to incorporate the time barred relief in the garb of Order VI Rule 17 CPC.

4. The learned Trial Court in view of the fact that the relief was barred by limitation and the Petitioner/Plaintiff on one pretext on the other was trying to delay the proceedings dismissed the applications with cost of Rs. 10,000/- out of which Rs. 5,000/- was to be deposited with Delhi Legal Services Authority.

5. Article 59 of the Limitation Act, 1963 prescribes the period for filing a suit seeking cancellation of an instrument as three years from the date of knowledge.

6. The Petitioner/Plaintiff cannot dispute the knowledge of the documents from 7th September, 2011 when the same were filed along with an application under Order VII Rule 11 CPC by the Respondents. The

application under Order VI Rule 17 CPC was filed on 12th March, 2015 along with an application seeking condonation of delay and is thus clearly beyond the period of limitation. In the garb of an application under Order VI Rule 17 CPC the Petitioner cannot seek a relief which is time barred.

7. In L.J. Leach and Co. Ltd. and another vs. Messrs. Jardine Skinner and Co., AIR 1957 357 the Supreme Court held:

“16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan [1920] 47 I.A. 255 the Privy Council observed:

"That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case."

Vide also Kisan Das v. Rachappa I.L.R. 33 BOM 644 (B)."

8. In T.N. Alloy Foundry Co. Ltd. vs. T.N. Electricity Board and others, 2004 (3) SCC 392 the Supreme Court following the decision of L.J. Leach and Co. Ltd (supra) held:

“2. Shri T.L.V. Iyer, learned Senior Counsel appearing for the appellant, urged that the view taken by the High Court in rejecting the amendment of the appellant was erroneous. The law as regard permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. and

Anr. v. Jardine Skinner and Co., AIR 1957 SC 357; [1957] 1 SCR 438, it was held that the Court as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the Court to order it.”

9. Learned counsel for the Petitioner urges that while deciding an application under Order VI Rule 17 CPC the merits of the amendment cannot be looked into. Indubitably while deciding an application under Order VI Rule 17 CPC the veracity of the claim cannot be gone into. However, the Court is not debarred from looking into the undisputed facts before it for which no evidence is required to be led. As noted above, the knowledge of the petitioner qua subsequent documents dated 22nd June, 1999 and 26th March, 2001 is attributed during the Court proceedings and are undisputable. Thus the Court cannot ignore such facts on the plea that the veracity of the amendment sought cannot be looked into while deciding an application under Order VI Rule 17 CPC.

10. The petitioner has not made out any exceptional case to allow amendment despite the same being time barred as laid in the decisions noted above. Consequently, the petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 21, 2015
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