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

% *Date of Decision : 17th November, 2015*

+ **CM(M) 1127/2015**

SANJAY KUMAR JAIN Petitioner

Through: Mr.Sharvan Dev, Advocate with
petitioner in person.

versus

NEERU JAIN Respondent

Through: None.

PRATIBHA RANI, J. (Oral)

CM No.27057 & 27059 of 2015

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M) 1127/2015

1. The petitioner is aggrieved by the order dated 30.09.2015 whereby his application under Order XIV Rule 5 CPC for framing of additional issues as well the application under Order XLVII Rule 1 CPC seeking review of the order dated 02.07.2015 have been dismissed by the learned Trial Court.
2. I have heard Mr.Sharvan Dev, Advocate for the petitioner and also carefully gone through the record.
3. Mr.Sharvan Dev, Advocate for the petitioner has submitted that on 02.07.2015 issues have been framed by the learned Trial Court in the absence of counsel for the petitioner/defendant. The application under Order XIV Rule 5 CPC has been moved without any delay and the proposed issues arise out of the pleadings of the parties, go to the root of the matter. Hence, it is necessary that the impugned order may be set aside with

direction to the learned Trial Court to frame the additional issues as proposed by the petitioner/defendant. Learned counsel for the petitioner has relied upon Smt.Indira Madani & Ors. vs. Hola Ram (deceased) by LRs & Ors. AIR 2003 Delhi 49, Ram Narain & Anr. vs. Ram Kumar & Anr. 44 (1991) DLT 28 and N.K.Bhatia vs. J.P.Singh 1991 RLR 128 in support of his contentions.

4. Before dealing with the contentions raised on behalf of the petitioner, it is necessary to record that Civil Suit No.9/2015 has been filed by the respondent/plaintiff claiming the relief of possession, damages/mesne profits and injunction in respect of Flat No.B-4/90A, Ground Floor, Residential Scheme, Lawrence Road, Delhi-110035. On 02.07.2015 the learned Trial Court framed the issues in the presence of counsel for the parties. The order dated 02.07.2015, copy of which has been placed on record as Annexure P/4 (complete order not filed by the petitioner) reads as under:-

'02.07.15

*Present : Plaintiff with counsel,.
Ld.counsel for the defendant.*

It is stated by the parties that there are no documents for admission/denial.

Upon the pleadings of the parties the following issues have been framed:-

1. Whether the plaintiff is entitled for decree of possession in respect of suit property i.e. Janta Flat bearing No.B-4/90A, Ground Floor, Lawrence Road Residential Scheme, Delhi-1100035 against the defendant? OPP

2. Whether the plaintiff is entitled to decree for recovery of ₹6000/- for the period 01.07.2011 to 15.07.2011 being the damages/mesne profits against the defendant? OPP

3. Whether the plaintiff is entitled for future damages @

₹12,000/- per month as the future damages/mesne profits from filing of suit till its realisation against the defendant? OPP.

4. *Whether the plaintiff is entitled for decree of permanent injunction against the defendant? OPP*

5. *Whether the suit of the plaintiff is bad for non-joinder of necessary party? OPD.*

6. *Relief?'*

5. By filing an application under Order XIV Rule 5 CPC, the petitioner, who is defendant in Civil Suit No.9/2015 prayed for framing of additional issues, which read as under :-

'A. Whether the defendant was inducted as licensee by the plaintiff in the suit premises? OPP.

B. Whether the plaintiff is the owner of the suit premises as alleged in the plaint? OPP.

C. Whether the suit is barred in law by virtue of provisions of benami transactions (Prohibition) Act, 1988?

D. Whether the defendant was inducted in the suit premises in terms of the family settlement reached at between the LRs of Late Babu Ram Jain? OPD.

E. Whether the plaintiff has correctly valued the suit property? OPP.'

6. While rejecting the two applications filed by the petitioner/defendant, the learned Trial Court has observed that the issues have been framed in the presence of the counsel for the defendant. It was also recorded that the suit has been filed to seek the relief of possession and recovery of damages/mesne profits for unauthorised use and occupation with consequential relief of injunction and the issues, which arise from the

pleadings of the parties, have been framed. Learned Trial Court has further observed that all the issues mentioned in the application are covered by the issues framed by the Court. Further the application seeking review of the said order deserves dismissal for the reason that the application under Order XIV Rule 5 CPC has been held to be not sustainable and merit less. The relevant paras wherein the learned Trial Court has also noted the conduct of the defendant, who himself is an Advocate, read as under:-

'It is also pertinent to mention that all issues as mentioned in the application of the defendant has already been covered by the issues as already been framed by the Court. Therefore, the aforesaid application is without any merit, hence the same stands dismissed.'

It is argued by the defendant that his another application U/O 47 Rule 1 of CPC for review of the order dt.02.07.15 is also pending. The prayer in the aforesaid application as well as in the application U/O 14 Rule 5 of CPC is the same and if the application U/O 14 Rule 5 of CPC is unsustainable and merit less, hence the same is also dismissed.

At this stage, the Court has asked the plaintiff to examine his witness and the defendant who is an advocate has submitted that he has some doubt why this Court is in hurry to dispose of this matter and submitted that today the case was fixed for disposal of the application U/s 151 of CPC and not for evidence. Heard.

PW-1 Smt. Neeru Jain and Pw-2 Sh.Manak Chand Jain have tendered their evidence by way of affidavit and their cross examination is deferred at request of the defendant.

Be put up on date fixed i.e. 18.1.15 for cross examination of PW-1 and PW-2/RPE.'

7. Learned counsel for the petitioner/defendant has been repeatedly asked as to how the proposed additional issues need to be settled when the

respondent/plaintiff is required to prove his case and while deciding the issues settled by the learned Trial Court, the status of the petitioner/defendant in the said property as licensee or his induction under some family settlement, has to be considered while deciding issues No.1 & 2. Learned counsel for the petitioner/defendant continued insisting that these issues have to be framed without being able to explain the necessity of framing the proposed issues.

8. The question of framing issue arises when any material proposition of fact or law affirmed by one party has been denied by the other party. It is the duty of the Trial Court to settle all necessary issues whether of fact or of law which are arising out of the pleadings of the parties. The purpose behind this is to determine the material points in controversy and that they are decided so as to give finality to the litigation.

9. In the case Makhan Lal Bangal v. Manas Bhunia 2001 (2) SCC 652, the Apex Court, while dealing with the importance and objective of the stage of framing of issues, observed as under :-

“The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other.”

It was further observed:-

“The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

10. So far as case law Smt.Indira Madani & Ors. vs. Hala Ram (deceased) by LRs & Ors. (Supra), Ram Narain & Anr. vs. Ram Kumar & Anr. (Supra), and N.K.Bhatia vs. J.P.Singh (Supra) relied upon by learned counsel for the petitioner is concerned, none of them is of any help to the petitioner for the reason that the issues framed by the learned Trial Court cover the dispute between the parties to be adjudicated by the learned Trial Court.

11. The petitioner has invoked the power of this Court under Article 227 of Constitution of India. In normal circumstances, this power is exercised where there is want of jurisdiction, error of law or perverse findings of the Trial Court. This Court would not substitute its opinion to interfere with the finding of the Trial Court if there is no infirmity or perversity. This Court will interfere only when error of law is apparent on the face of record which has resulted in gross injustice.

12. Finding no illegality, infirmity or perversity in the impugned order, the present petition is dismissed.

13. No costs.

CM No.27058/2015 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 17, 2015/ 'st'