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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 306/2016
SALMA NOOR

..... Petitioner

Through Mr. Siddharth Dutta, Advocate for R2

versus

ANUPAMA JHA AND ORS

..... Respondents

Through Mr. Sidharth Joshi, Advocate for R-2

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **30.03.2016**

Petitioner is aggrieved by the order dated 23.11.2015 vide which two applications were decided; the application filed by the defendant under Order 7 Rule 11 of the CPC stood rejected and the application filed by the plaintiff under Order 6 Rule 17 of the CPC seeking an amendment of the plaint had been allowed.

Learned counsel for the petitioner submits that the averments in the plaint disclose no cause of action and there would be no purpose served in treading upon a path which will lead to nowhere. The plaint is liable to be rejected. Reliance has been placed upon a judgment reported as Rajasthan State TPT Corpn. & Anr. versus Bajrang Lal in Civil Appeal No. 4104/2007 to support this submission.

Record shows that the suit filed by the plaintiff was simplicitor a suit for permanent injunction. Contention in the plaint was that the

plaintiff was the owner of the floor 7th floor bearing No. 24/703, East End Apartments Mayur Vihar Phase-I Ext. Delhi. Defendant No.1 who is in the occupant of the 8th floor was carrying on illegal constructions and the officials of the Municipal Corporation of Delhi and the police are in collusion with defendant no.1 permitting him to carry on the said illegal construction. Prayer was made to restrain him from raising any further construction.

In the course of these proceedings the application under Order 6 Rule 17 of the CPC came to be filed by the plaintiff. This was in May 2014. Plaintiff had sought to amend the prayer clause. The amendment was to the effect that defendant No.1 and his successors be restrained from raising any unauthorized construction on the 8th floor as also to remove the illegal unauthorized construction already carried out.

The defendant in December 2014 filed an application seeking rejection of the plaint. Submission being that the plaint by itself did not disclose any cause of action. Plaint was liable to be rejected. As noted supra the impugned order has decided both the aforementioned applications. The Court had noted that the suit was still at its nascent stage. The issues were yet to be framed. The amendment sought for by the plaintiff only elucidated the matter; the amendment was to the effect that removal of the unauthorized construction carried out by the defendant on the 8th floor be demolished. This was in addition to the prayer already made in the plaint which was that the plaintiff should be restrained from carrying out any illegal construction on the 8th floor. The Court had thus allowed the amendment noting that this would better resolve the controversy between the parties. At the same time the

application filed by the defendant seeking rejection of the plaint under Order 7 Rule 11 of the CPC had been dismissed. The Court had noted that the averment of the plaint did disclose a cause of action. The submission of the defendant that the sanctioned plan had not been filed along with the plaint and this would not be of any effect at this stage. Needless to state that the law for deciding an application under Order 7 Rule 11 of the CPC is only premised upon the averments which have been made in the plaint and which have to be adhered to and not the defence raised by the defendant. The application under Order 7 Rule 11 of the CPC was also rightly rejected. The averment did disclose a cause of action as is evident from the reading of the plaint. The judgement relied upon by counsel for the petitioner has absolutely no bearing on the facts of the instant case. Impugned order calls for no interference .

Dismissed with costs quantified at Rs. 10,000/-.

INDERMEET KAUR, J

MARCH 30, 2016

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