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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 398/2016
S K GUPTA Petitioner
Through Mr.C.P.Vig, Advocate.

versus

RAKESH SACHDEVA & ANR Respondents
Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **04.05.2016**

C.M. No.15353/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 398/2016 & C.M. No.15352/2016 (stay)

Petitioner is aggrieved by the order dated 27.02.2016 vide which the counter claim filed by the defendant (in the Trial Court) seeking recovery of Rs.20 lacs was permitted to be amended by a subsequent application filed by him under Order VI Rule 17 of the CPC.

Record shows that the present suit is a suit for recovery of money which had been filed by the plaintiff against the defendant.

This Court has been informed that the plaint stood rejected. The counterclaim filed by the defendant on 26.02.2009 wherein a sum

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of Rs.20 lacs had been claimed was alone. The averments made in the paragraphs 8,9,10 and 11 are relevant. The counterclaim came to be amended on 27.02.2016 i.e. after the framing of the issues but before the trial had started. The evidence had not yet begun. The proviso contained in Order VI Rule 17 of the CPC would thus not be applicable.

Learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court in Vidyabai & Ors. Vs. Padmalata Civil Appeal No.7251 of 2008 decided on 12.12.2008 to support a submission that proviso of Order VI Rule 17 of the CPC would come into play; the amendment is not permissible. This judgment is not applicable to the facts of the instant case; in the present case admittedly affidavit by way of evidence has not yet been filed.

The application and the averments contained in the application under Order VI Rule 17 of the CPC have been perused. By way of this application sub paras (a), (b) and (c) in para 11 were sought to be inserted. Vehement contention of the learned counsel for the petitioner is that these are not mere elaborations but they would change the nature of the counterclaim and in fact by adding these averments, the time barred claim of the non-applicant would fall within limitation which is not the scope of an application under Order VI Rule 17 of the CPC.

This Court is not in agreement with this submission made by the learned counsel for the petitioner. As noted supra, the earlier paragraphs i.e. 8 to 11 of the original counterclaim have detailed the

mental tension and harassment which was suffered by the non-applicant in view of which a claim of Rs.20 lacs was set up. By insertion of sub paras (a), (b) and (c) in paragraphs 11, the said submission has only been enlarged and elaborated. This is the very purport and purpose of an amendment and would fall within the purview of Order VI Rule 17 of the CPC and which is legally permissible.

Impugned order in this background, suffers from no infirmity. This petition is without any merit. It is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MAY 04, 2016
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