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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1151/2012 & C.M. No.18040/2012

DDA

..... Petitioner

Through Mr. Pawan Mathur, Adv.

Versus

RAJ KUMAR

..... Respondent

Through Mr. S.K. Kaushik, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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06.05.2016

The petitioner is aggrieved by the order dated 04.02.2012 vide which the application filed by the plaintiff (defendant in the Trial Court)-DDA seeking leave to amend the written statement had been declined. There were in fact two applications which had been filed by the petitioner. The first was an application under Order 6 Rule 17 of the CPC by virtue of which the petitioner sought permission to amend his written statement. The second application was an application under Section 152 of the CPC wherein certain corrections were sought to be made. The petitioner was not aggrieved by the order passed on the second application. He is aggrieved only by the finding returned on the second application wherein the prayer to amend the written statement had been declined.

Record shows that the present suit is a suit for declaration and permanent injunction which the plaintiff has filed against the defendant. His case was that he had applied for an MIG flat under the DDA Housing Scheme of 2008. In the draw which was held on

16.12.2008, a flat was allotted to him. Later on, due to a fraud played by the DDA (pursuant to which an FIR was registered) his allotment stood cancelled. He had accordingly filed the present suit seeking a declaration that the cancellation of the allotment which had earlier been made in his name be set aside.

Written statement was filed. Para 18 of the written statement is relevant. It reads herein as under:-

“That the para No. 18 of the plaint is cannot be allowed as the facts are given under this para but the DDA/defendant is ready and willing to give him another flat”

In the course of proceedings, the DDA had filed the present application. Submission was that the word ‘not’ appearing in the second line of para 18 had inadvertently missed out; this being only an inadvertent mistake, permission be granted to the petitioner to amend the written statement. Attention has also been drawn to the preceding paragraphs to support this submission. Submission being that para 18 would now become in conformity with the earlier paragraphs of the written statement.

This position has been disputed by the learned counsel for the respondent. It is stated that once an admission has been made by the DDA in para 18 that it was willing to allot a flat to the petitioner, it cannot now withdraw from that admission.

Pleadings of the present case are relevant. Para 18 of the plaint is to the effect that the plaintiff has performed his part of contract and is ready to pay the balance amount and thus cancellation of the flat by the defendant is illegal, unwarranted and arbitrary. The corresponding

paragraph of the written statement (as noted supra) does not appear to be in conformity with para 18 but the gist of para 18 conveys that cancellation of the flat by the DDA was an arbitrary act; it was not warranted; it has to be set aside. If the rest of the lines of para 18 are read along with the earlier two lines of para 18 as also with the other averments noted in the written statement, the impression that this Court has gathered is that the defendant was not willing to give any flat to the plaintiff. It thus appears that the word 'not' in the second line of para 18 has inadvertently been left but this was not noted by the Trial Court in the correct perspective.

The whole purpose of an amendment is to overcome to an error which is an advertent and which would not prejudice the rights of the parties; it should be subject to law of limitation; it should not change the nature of the case.

Applying the aforesaid test to the amendment which is sought to be incorporated, this Court is of the view that the entire body of the pleadings which includes the plaint and the written statement would clearly show that the defence of the defendant/DDA all along was that the earlier allotment which had been cancelled was unwarranted and arbitrary and not called for; DDA was not in a position to give any other flat to the plaintiff. Moreover once a pleading is permitted to be incorporated (in view of the prayer made in the application under Order 6 Rule 17 of the CPC) it yet remains only a pleading. At the cost of reiterating the settled proposition of law, it does not amount to proof. The pleading, even if permitted to be incorporated will have to be proved in accordance with law.

In this background, this Court is of the view that the impugned order is liable to be set aside. It is accordingly set aside. Amended written statement is taken on record. This order is passed subject to payment of costs of Rs.10,000/-.

Petition disposed of.

INDERMEET KAUR, J

MAY 06, 2016

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