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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 476/2016

MAMTA NAGPAL

..... Petitioner

Through

Mr.R.P.Sharma

and

Mr.Vikram

Singh, Advocates.

versus

LOVLEEN & ORS

..... Respondents

Through

Ms.Payal Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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16.05.2016

CAV 418/2016

Respondent has put in appearance. Caveat stands discharged.

It is disposed of accordingly.

C.M. No.18471/2016 (exemption)

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

CM(M) 476/2016 & C.M. No.18470/2016 (stay)

Petitioner is aggrieved by the order dated 17.3.2016 as also the subsequent order dated 26.4.2016 passed by the Trial judge wherein his application seeking permission of the Court to file an additional written statement had been declined. This was by the first impugned order. Vide the second impugned order his application seeking framing of additional issues also stood declined.

Record shows that a suit had been filed by the plaintiff against the defendant (father of the petitioner) for eviction and mesne profits.

CM(M) 476/2016

Page 1 of 5

Written statement was filed by the defendant. On 18.9.2000 issues were framed. Trial was in progress. The sole defendant expired on 11.01.2013. An application under Order XXII Rule 4 of the CPC was filed by the plaintiff seeking permission of the Court to bring his legal representatives on record. This was on 22.02.2013. The legal representatives of the deceased defendant was impleaded on 07.11.2015. On 05.3.2016, the petitioner (Mamta Nagpal) one of the legal representatives of the deceased defendant sought permission of the Court to file additional written statement seeking permission to incorporate paras 'A' to 'N' with a further request by another written statement dated 10.3.2016 to take on record (paras 'O' to 'V') of that additional written statement. The Trial Judge by the first order dated 17.3.2016 had declined to take this additional written statement on record. On 26.4.2016, the Trial Court has refused to take on record para A to N of the additional written statement.

The petitioner who is the one of the legal representative of the sole defendant has invoked writ jurisdiction of this Court being aggrieved by the aforementioned two orders.

Learned counsel for the petitioner submits that the Trial Judge has committed illegality and it was well within the right of the petitioner to have filed the additional written statement which is clear from the language of Order XXII Rule 4(2) of the CPC. He has also placed reliance upon a judgment of the Apex Court reported as 1995 AIR 1653 (SC) Vidyawati Vs. Man Mohan & Ors. to support this submission. Reliance has also been placed upon AIR 2007 SC 3166

Sumtibai & Ors. Vs. Paras Finance Co. Mankanwar.

Per contra, learned counsel for the respondent submits that the whole idea in filing this petition is to delay the proceedings. The written statement had admittedly been filed by the deceased defendant. The additional written statement now sought to be filed by the applicant/petitioner seeks to incorporate new facts which is not permitted by the law. To support her submission she has placed reliance upon a judgment of the Apex Court reported as AIR 1965 SC 553 Misrilal Parasmal Vs. H.P.Sadasiviah and Anr. as also a judgment of this Court reported as 2012 (127) DRJ 339 Vigro Frozen Foods P. Ltd. Vs. S.K.Gandhi and Anr.

The submission of the learned counsel for the petitioner that a new proposition of law has to be laid down by this Court is wholly incorrect. The law is well settled. An additional written statement can be filed by the legal representative of a deceased party but it has to be within the parameters of Order XXII Rule 4 (2) of the CPC.

Relevant would it be to quote the said provision which reads as under:

“4. Procedure in case of death of one of several Defendants or of sole Defendant.-

.....

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased Defendant.”

Sub rule (2) of Rule 4 of Order 22 authorizes the legal representative of a deceased defendant to file an additional written

statement or statement of objections raising all pleas which the deceased defendant had or could have raised except those which were personal to the deceased. Thus it is clear from the language of the statutory provision that all that the legal representative can, therefore, do is to take up the suit at the stage at which it was left when the original party died and to continue thereafter. It was not open for the legal representative to assert his own individual right or a hostile title to the suit. It is also clear that any defence which was not open to the defendant, will also not be a defence available to his legal representative. If the legal representative wants to raise any new point which the deceased party did not raise he must challenge the same by way of a substantive proceeding. He cannot be permitted to set up a new case. The petitioner in this case has simply stepped into the shoes of his deceased the defendant father and thus has to follow and toe the line of his deceased father.

The additional written statement and paras A to N and O to V in the purported written statements dated 10.3.2016 and 17.3.2016 had raised new grounds. A specific query has been put to the learned counsel for the petitioner on this score and he admits that these defences were not raised by the deceased defendant. Submission being that the defence about the sale deed was not raised by his father as this fact was not known to him. This position is disputed by the petitioner who submits that these facts were well within the knowledge of the defendant. The applicant now wishes to set a plea that the plaintiff was never the owner of the suit property till the year

2006. These defences now sought to be raised which were well within the knowledge of the defendant and even presuming that they were not within his knowledge not having been raised by the defendant it is not open to the one of the legal representatives of the deceased defendant to set up such a plea. At the cost of repetition a new case cannot be set up by the legal representative of the deceased as the language of Order XII Rule 4(2) of the CPC is clear. It permits a legal representative to make a defence which is appropriate to his character as a legal representative of the deceased.

The new facts now sought to be incorporated by way of the additional written statements were rightly rejected by the Trial Judge. Impugned order calls for no interference.

This petition appears to be wholly mala fide as the contention of the learned counsel for the respondent is that all efforts are being made by the legal representatives of the deceased to ward off the final arguments as the matter has now become ripe for the said purpose. Submission being reiterated that that legal representative of the deceased had been brought on record in November, 2015 but the petitioner waited up to March, 2016 (more than four months later) to move the present application. This Court is persuaded to take note of this submission of the learned counsel for the respondent.

Impugned order calls for no interference.

Petition dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MAY 16, 2016/ndn
CM(M) 476/2016

Page 5 of 5