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

+ CM(M) 502/2016 & C.M. Nos.19523-24/2016

HAWA SINGH SAINI Petitioner

Through Mr. Mahipal Singh, Adv.

versus

RAJESH KUMAR JAIN (HINDU UNDIVIDED FAMILY)

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **20.05.2016**

The petitioner is aggrieved by the order dated 27.04.2016 vide which the application filed by him under Order 6 Rule 17 of the CPC seeking an amendment in his application seeking leave to defend had been dismissed.

Record shows that the present suit is a suit filed under Order XXXVII of the CPC. Leave to defend had been filed within the stipulated period i.e. on 12.01.2015. Present application under Order 6 Rule 17 of the CPC came to be filed on 20.03.2015. Amendments were sought on other counts. The impugned order in fact has tabulated the amendments. A perusal of these amendments which have been tabulated show that by way of present application, the defendant wanted to state that he had issued a blank cheque of Rs.10 lacs and he had given it for a security purpose and this had also been

mentioned in his cheque book; he denied having taken any loan from Rajesh Kumar, HUF (plaintiff). This defence now sought to be raised is admittedly a new defence which did not find mention in the earlier application seeking leave to defend wherein the defence pleaded by the plaintiff/defendant on this score was that the defendant had paid Rs.3 lacs on 29.06.2006 and another sum of Rs.1.5 lacs in cash; he had already paid Rs.9,87,200/- and as such no amount was due from the defendant.

The Trial Court had noted the facts in the correct perspective. It had noted that the whole purpose of summary procedure as contained in Order XXXVII of the CPC would also be destroyed if the application seeking leave to defend is permitted at a mere asking; it was not the case of the petitioner defendant that certain subsequent events had come to his knowledge and which were subsequent to his filing the application seeking leave to defend. The amendments sought for clearly show that these facts which are now sought to be incorporated by way of an amendment were well within the knowledge of the plaintiff at the time when he had filed his application seeking leave to defend.

In this background, the impugned order suffers from no infirmity.

Reliance by the learned counsel for the petitioner upon the judgment in Steel Authority of India Ltd Vs. M/s Kailashpati Steel Industries Ltd and Others in C.S. (OS) No.2158/1997 decided on 19.05.2004 is misplaced. This judgment only lays down that the Code

of Civil Procedure is applicable to suits under Order XXXVII of the CPC.

This petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MAY 20, 2016/A