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

% *Date of Judgment : 11.05.2016*

+ CM(M) 940/2014
MANAS MANDIR

..... Petitioner

Through Mr. Satish Sahai, Adv.

versus

SHRI SUDHIR KUMAR RAKHEJA

..... Respondent

Through Mr. Preetjeet Singh, Adv.

+ CM(M) 941/2014
MANAS MANDIR

..... Petitioner

Through Mr. Satish Sahai, Adv.

versus

SMT. LAJWANTI

..... Respondent

Through Mr. Preetjeet Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 The petitioner is aggrieved by the order dated 26.05.2014 vide which the application filed by him under Section under Order 6 Rule 17 of the CPC seeking an amendment in his eviction had been dismissed. He is aggrieved by this finding.

2 Record shows that an eviction petition had been filed by the petitioner/landlord under Section 22 of the Delhi Rent Control Act (DRCA). The petitioner has been described 'Manas Mandir'. The sole defendant was

the tenant namely Sudhir Kumar Rakheja. In the course of the proceedings, the present application came to be filed. Averments made in the present application have been perused. Contention is that certain amendments are sought to be made in the eviction petition as also the rejoinder, verification and supporting affidavits filed by the petitioner which had been filed through its two trustees (namely K.V.Khandelwal and Devender Kumar Kainth). The said trustees had been authorized by Resolution (dated 06.04.2009) of the Trust to file the eviction petition. Their affidavits in support of the petition clearly described trustees as the trustees of the Vishwa Bharti Ved Ashram Trust. The proposed amendments seek to place on record petitions, rejoinders, verification and supporting affidavits which would bear the signature of Jai Narain Khandelwal who is the Vice-Chairman of Vishwa Bharti Ved Ashram Trust which at the time of the filing of the first petition was inadvertently and due to a bonafide error left out. Submission is that admittedly the Vice-Chairman of the Trust is Jai Narain Khandelwal and the proposed amendments, if permitted, would only be to the effect that the amended petition, rejoinder, verification and the supporting affidavits already signed by the earlier two trustees (namely K.V.Khandelwal and Devender Kumar Kainth) would now also bear the signatures of the Vice-

Chairman of the Trust. Learned counsel for the petitioner in support of his submission has placed reliance upon (2006) 1 SCC 75 Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another, (2006) 6 SCC 498 Baldev Singh & Others Vs. Manohar Singh and Another as also (2003) 6 SCC 675 Surya Dev Rai Vs. Ram chander Rai and Others. Contention is that the defects in signing or the authority of person signing pleadings is a handmaid of justice which is only a procedural formality; law of amendment which is a liberal law must be appreciated in the correct perspective.

3 Reply had been filed to the aforementioned application. It was denied that these are only bonafide errors and mistakes. Contention in the reply was that these defects would amount to filling life into a dead horse. The nature of the case would change.

4 In support of this submissions, learned counsel for the respondent has placed reliance upon 1944 AIR (Bom) 201, 1977 AIR (SC) 680 Modi Spinning and Weaving Mills Company Limited Vs. Ladha Ram and Company, AIR 1977 SC 1222 Trimbak Gngadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Other as also AIR 1994 SC 853 S.P. Chengalvaraya Naidu (dead) by L.R.s Vs. Jagannath (dead) by L.R.s and Others. Submission being that the amendment, if permitted, would change

the very nature of the case; it would amount to withdrawal of an admission which is not permitted by law.

5 Arguments have been heard. Record has been perused.

6 The original eviction petition has been filed Manas Mandir. It was an eviction petition under Section 22 of the DRCA. This petition had been filed through K.V.Khandelwal and Devender Kumar Kainth, the two trustees. The eviction petition discloses that the bonafide need of the petitioner (Manas Mandir) which is the need for a public temple and public institution in the furtherance of its activities. Para 18-A of the eviction petition while disclosing this need further states that the public trust under the name of Vishwa Bharti Ved Ashram Trust has been created and the subject matter of the eviction petition was dedicated to this Trust. This Trust is a religious Trust. In pursuance of the aims, objects and purpose of the said Trust, a public temple under the name and style of 'Manas Mandir' was created. The Resolution passed by the Public Trust dated 06.04.2009 has been detailed. Copy of the Resolution has also been placed on record. It is stated that this petition has been filed against the tenant in pursuance to the aforementioned Resolution.

7 Before the evidence could begin, the aforementioned application under Order 6 Rule 17 of the CPC came to be file. This factual position is not disputed. In this factual scenario, since the trial had not yet commenced, the applicability of the proviso of Order 6 Rule 17 of the CPC was mis-applied in the impugned order. That part of the order holding that the trial had commenced and the proviso of Order 6 Rule 17 of the CPC was an embargo in allowing the prayer made in the application under Order 6 Rule 17 of the CPC being a mis-statement of fact, this part of the order is clearly an illegality. Since there is no dispute to the factual position (admitted by the learned counsel for the respondent) that the trial had not yet commenced; the proviso of Order 6 Rule 17 of the CPC would not be applicable.

8 The amendments sought for (as noted supra) appear to be only bonafide error. Admittedly the eviction petition had been filed through two trustees. Due to inadvertence, it had not been mentioned in the earlier petition that the Vice Chairman of the Trust is authorized to sign and verify the pleadings including the rejoinders and affidavits.

9 The submission of the non-applicant/defendant that the whole nature of the eviction petition will change is clearly not made out; it is not as if that the plaintiff by way of this application is seeking to change either the name

of the plaintiff or the foundational facts which are laid down in the eviction petition. The petitioner/plaintiff remains the same; it is 'Manas Mandir'. In the eviction petition, 'Manas Mandir' has been described as the Mandir which has been created by the Trust in furtherance of its aims and objects; the Trust is Vishwa Bharti Ved Ashram Trust. The plaintiff is an integral part of the Trust. The name of the Trust and the copy of the Resolution dated 06.04.2009 on the strength of which two trustees had signed the present eviction petition is also clearly mentioned in the eviction petition. The rent note (01.09.1984) relied upon by the respondent in fact supports the stand of the petition as it has also been executed in favour of the Vishwa Bharti Ved Ashram Trust-Manas Mandir. By way of this amendment, the plaintiff is only overcoming the apprehension of a defect which may arise relating to the institution of the eviction petition. At the cost of repetition, the eviction petition has been filed through its two trustees on the strength of a Resolution passed by the Trust; the petitioner has been described as 'Manas Mandir'. He will continue to remain the same. The amendment, if permitted will only permit the petitioner to state in the eviction petition that the eviction petition has been filed through the Vice Chairman of the Trust who is duly authorized to file and institute the said proceedings.

10 This Court also notes that while allowing a prayer under Order 6 Rule 17 of the CPC, the Court is only permitting a pleading to be incorporated. It does not amount to a proof. There is a clear distinction between a pleading and a proof of a pleading. Needless to state a pleading, even if permitted to be incorporated, would be required to be proved as per law.

11 In the judgment of Uday Shankar Triyar (Supra), the Court while dealing with the defects in signing or the authority of a person signing the pleadings in the context of an application under Order 6 Rule 17 of the Code, had noted that judicial notice can also be taken of various defects which are routinely found in the vakalatnamas; such failures sometime lead to complications at later stage. The law on amendment being handmaid of procedural law, the Court in appropriate cases may exercise this unfettered discretion fairly to advance the cause of justice.

12 This Court is of the view that the aforementioned ratio would be fully applicable to the facts of the instant case. What is sought to be incorporated is an amendment in a procedural error which had crept in because of an inadvertent or inept drafting. The nature of the eviction petition will not change. The proviso of Order 6 Rule 17 of the CPC is also not applicable; impugned order was largely premised on this provision.

13 In this background, the impugned order is liable to be set aside. It is accordingly set aside. Amended petition is taken on record. This order is passed subject to payment of cost of Rs.10,000/- in each of the petitions.

14 Petitions disposed of.

INDERMEET KAUR, J

MAY 11, 2016

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