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

+ CM(M) 650/2016

RASHMI KAKKAR Petitioner
Through Mr. Mani Mishra, Advocate.

versus

DAFFODIL SOFTWARE LTD Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 12.07.2016

CM No. 24323/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 650/2016 and CM No.24135/2016 (stay)

1. By the present petition the petitioner seeks to impugn the order dated 19.04.2016 of the Trial Court.
2. The petitioner has filed the suit for recovery of Rs.2,31,450/-. The written statement is said to have been filed on 05.11.2015. Issues were framed on 05.12.2015. The matter was fixed for the trial on 02.02.2016 when the respondent/defendant had filed the present application for amendment and seeking addition of the relief of set-off. By the impugned order the Trial Court allowed an application for amendment of the written statement incorporating the relief of set-off based on the facts already pleaded in the written statement. The Trial Court concluded that there is no

delay in filing the application and the amendment is necessary to prevent multiplicity of litigation and is also essential for determining the real question in controversy. The amendment stated to be only making the factual claim in the written statement more precise and seeking a relief of set-off based of the facts already pleaded in the written statement. No new fact is sought to be incorporated. Based on this conclusion, the application was allowed by the Trial Court subject to cost of Rs.1,500/-.

3. Learned counsel appearing for the petitioner firstly submits that the application for amendment is contrary to Order VI Rule 17 CPC inasmuch as, there is no attempt to show due diligence on behalf of the respondent. It is secondly contended that the set-off has to be filed as per Order VIII Rule 6 CPC on the first hearing of the suit and the same has not been done in this case.

4. As far as the first plea is concerned regarding the provisions of Order VI Rule 17 CPC, the trial admittedly has not yet commenced inasmuch as no witness is examined as yet. Accordingly, the proviso to Order VI Rule 17 CPC would not be applicable. The suit is instituted in 2014. The written statement was filed on 05.11.2015 and the amendment has been sought on 02.02.2016. Accordingly, in my opinion, there is no substantial delay in moving the application. The principles of amendment under Order VI Rule 17 CPC would necessarily permit allowing of the said application.

5. Reference maybe had to the judgement of the Supreme Court in the case of ***Abdul Rehman and Anr.Vs. Mohd. Ruldu and Ors. 2012 11 SCC 341***. Relevant paras read as follows:

“18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy

between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

6. As far as Order VIII Rule 6 CPC is concerned, it states that in the circumstances stated therein, the defendant may at the first hearing of the suit, but not afterwards unless permitted by the court, present a written statement containing the particulars of the debt sought to be set off. Hence, a set off should normally be pleaded at the first hearing of the suit. However, for reasons to be recorded by the court, the court can permit a set off at a later stage. In my opinion, in the facts and circumstances of the case, the plea of set off has been rightly allowed.

7. Accordingly, there is no infirmity in the impugned order. Petition stands dismissed.

JAYANT NATH, J

JULY 12, 2016

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