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

+ CM(M) 1250/2016 & CM Nos.44890-44891/2016

MAM RAJ

..... Petitioner

Through Mr.Om Prabhakar, Advocate

versus

M/S RATHI SPECIAL STEELS LTD & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.12.2016

1. By the present petition under Article 227 of the Constitution of India the petitioner Shri Mam Raj seeks to impugn the order dated 11.5.2016 by which an application filed by the respondent under Order 1 Rule 10 CPC was allowed. The suit has been filed by the respondents against Shri Som Prakash Mittal respondent No.2 for recovery of Rs.9,57,300/- on the ground that the respondent No.1/plaintiff had supplied certain iron and construction material to M/s.Mittal Paints and Hardware Stores for which commercial negotiations were carried out between respondent No.1 and 2. Shri Som Prakash Mittal that is respondent No.2 represented himself to the authorised proprietor of the Firm.

2. An ex parte decree was passed against the respondent No.2. The respondent No.2 moved an application under Order 9 Rule 13 CPC. The ex parte decree was set aside subject to the condition of deposit of Rs.7,50,000/- by respondent No.2. Same was reduced by this court to Rs.4,00,000/-.

3. By the impugned order the trial court impleaded the petitioner, who as

per respondent No.2 himself is the proprietor of M/.Mittal Paints and Hardware Store. The other prayer in the application to implead Shri Nitin Mittal the grandson of Shri Mam Raj was disallowed.

4. Learned counsel appearing for the petitioner submits that on 17.5.2010 the respondent No.2 had moved an application under Order 9 Rule 13 CPC where it was mentioned that Shri Mam Raj the petitioner is proprietor of M/s.Mittal Paints and Hardware Store. The present application for impleadment was filed on 1.7.2013. Hence, it is stated that the claim against Shri Mam Raj/petitioner is barred by limitation and the application cannot be allowed.

5. It is settled law that the court has powers in certain circumstances to permit an amendment to add a claim which is barred by limitation. Reference in this regard may be had to the judgment of the Supreme Court in *Pankaja & Anr. v. Yellappa & Anr., 2004(6) SCC 415*. The Supreme Court in the said case held as follows:-

“13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further

litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

6. In the present case it is obvious that there were serious disputes as to who is the proprietor of M/s. Mittal Paints and Hardware Stores i.e. Shri Mam Raj or his son or his grandson. The respondents cannot take advantage of this needless confusion and wriggle out of the controversy on the stated grounds especially as they appear to have themselves created the confusion. There is no infirmity in the impugned order.

7. The petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

DECEMBER 05, 2016

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