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

% *Date of Decision: 19.07.2016*

+ CM(M) 679/2016

SATISH SHARMA Petitioner
Through Mr. Abhinav Sharma, Advocate.
versus

DINESH DHIMAN Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 25241/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 679/2016 and CM No. 25240/2016

1. By the present petition, the petitioner seeks to impugn the order dated 05.05.2016 by which the trial court has allowed the application under Order VI Rule 17 CPC filed by the respondent/plaintiff permitting amendment of the plaint.
2. The respondent filed a suit for permanent and mandatory injunction stating that the petitioner is carrying on illegal and unauthorised construction. It is also averred that the petitioner has thrown *malba* in front of the house of the respondent and was trying to construct a ramp by encroaching upon the street which is a public land. It is averred that this is causing hindrance in the ingress and egress to the house of the respondent.

Subsequently, the concerned Municipal Corporation which is a party in the suit carried out an inspection stating that *malba* for construction of the ramp had been dumped by the petitioner in the Gali. The trial court passed an interim injunction for removal of this *malba*. *Malba* was removed in compliance of that order by the petitioner.

3. It was in these circumstances that the respondent filed an application under Order VI Rule 17 CPC whereby he sought to amend the prayer clause to seek damages from the petitioner/defendant. As per the application moved, the respondent seeks to add the following relief to the prayer clause of the plaint.

“a) To pass the direction thereby direct to the defendant No.1 to pay the damage to the plaintiff;”

4. By the impugned order the trial court has held that the trial of the suit is at an initial stage of the proceedings and the trial has not yet begun. It further held that the nature of the amendment sought is part and parcel of the cause of action as already pleaded by the respondent and it flows from the facts and circumstances already stated. It would also avoid multiplicity of litigation. In these facts, the application was allowed.

5. Learned counsel appearing for the petitioner has submitted that the suit is a frivolous suit and can be adjudicated upon without leading evidence as is evident from the order dated 10.03.2015 passed by the trial court. On the said date the court had noted its opinion that there is no document to show as to whether any unauthorised construction exist and that the present suit may not require any trial. He submits that to undo this finding recorded

by the trial court, the respondent has now moved the present amendment application seeking damages.

6. Amendment of pleadings is governed by Order VI Rule 17 CPC. The same reads as follows:

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. Reference may be had to the judgement of the Supreme Court in the case of *Abdul Rehman & Arn. Vs. Mohd. Ruldu & Ors., (2012) 11 SCC 341*. The Supreme Court held 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.”

8. Reference may also be had to the judgement of the Supreme Court in the case of *Rivajeetu Builders and Developers vs. Narayanswamy and Sons and Ors., (2009) 10 SCC 84*. The Supreme Court held as follows:-

“63. On critically analyzing both the English and Indian cases,

some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequate in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

There are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

9. The claim for damages now sought by the amendment application would arise from the same facts and circumstances of the case. It does not change the nature of the suit. The proposed amendment merely is a consequence of averments already there in the plaint. Refusing the present amendment would needlessly lead to multiple litigations. Further, the suit is at an initial stage. No irreparable injury is likely to be caused to the petitioner. In fact, there is no averment by the petitioner of any irreparable injury being caused. Merely because as per the submission of the petitioner the suit as presently framed could be disposed of without evidence could not

be a ground to refuse the present amendment. In any case, the order relied upon by the petitioner, namely the order dated 10.03.2015, cannot be said to have attained finality inasmuch as the same was a prima facie finding.

10. Further, the record shows that there was *malba* dumped by the petitioner which is reflected in the inspection report filed by the concerned Municipal Corporation. The impugned order also records that after the interim injunction was passed, the petitioner has removed the *malba*. These findings are prima facie findings.

11. Petition is without merits. There is no infirmity in the impugned order. The present petition is accordingly dismissed.

JAYANT NATH, J.

JULY 19, 2016
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