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

+ CM(M) 887/2016

AARTI MEHRA Petitioner

Through: Mr. B.S. Chauhan, Advocate.

versus

KAMLA DEVI Respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **07.09.2016**

C.M. Nos.32789-32790/2016 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No.32791/2016 (for delay)

1. This is an application seeking condonation of 12 days delay in re-filing the present petition.

2. For the reasons stated in the application, the same is allowed and delay of 12 days in re-filing the present petition is condoned as 'sufficient cause' has been shown.

3. The application stands disposed of.

CM (M) No.887/2016 & C.M. No.32788/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 8.4.2016 passed by the trial court dismissing the application of the petitioner under Order I Rule 10 CPC and partly dismissing the application under Order VI Rule 17 CPC.

2. The petitioner/plaintiff has filed the present suit for declaration and injunction. It is the stand of the petitioner that he was the absolute owner of the first floor of built-up Janta flat bearing No.665, Pocket-1, Madipur (Paschim Puri), New Delhi. It is averred in the plaint that the petitioner executed a sale deed of the suit property in favour of respondent No.1, mother of respondent No.2, but no sale consideration was given to the petitioner. Based on these averments and other averments about the conduct of respondent No.2 and his friend, Praveen Kumar, who is said to have promised to execute a document regarding flat No.A-3-B, DSIDC (Madipur), Paschim Puri, New Delhi, in favour of the petitioner, the petitioner seeks declaration that the sale deed dated 17.1.2013 of the said flat is null and void.

3. By the proposed amendment, the petitioner sought relief of possession of the property which relief was allowed. In addition to that, the petitioner sought to implead three more defendants along with some averments in the plaint regarding the said defendants. The essence of the averments sought to be introduced were that the plaintiff has come to know that her husband, Rajesh Mehra who died on 26.8.2012, along with respondent No.2 and one Praveen Kumar were doing business of selling and purchasing of flats in partnership and they were purchasing the same in the name of their wives or sometimes separately and sometimes jointly and distributed expenses and profits amongst themselves. Based on the said averment, the petitioner states that various properties were bought and sold including Flat No.315, Pocket-I, Block-A, Paschimpuri, New Delhi,

Flat No. 671, Pocket-I, Pashimpuri, New Delhi and finally the flat which is the subject matter of the suit. Based on this, the petitioner seeks to add these averments in the plaint and also implead the additional parties.

4. Vide impugned order, the trial court disallowed addition of defendant Nos.3 to 5 in the array of parties noting that neither any cause of action is pleaded against the proposed defendants nor any relief is sought against them. Relying upon the provision the trial court held that the said defendants are neither necessary nor proper parties.

5. I have heard the learned counsel for the petitioner. He has not been able to show to me as to how the defendants are necessary or proper parties. The averments which are sought to be added merely show the source of funds on the basis of which the suit property has been purchased. These facts appear to have no relevance to the relief sought against the original defendants by the petitioner. At best the proposed parties may be necessary witnesses, whom the petitioner can always summon but not necessary parties.

6. There is no merit in the petition and the same is dismissed.

JAYANT NATH, J.

SEPTEMBER 07, 2016
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