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

+ CM(M) 753/2016

AJAY MAHENDRU Petitioner
Through Mr.Ankit Jain, Advocate

versus

SH.INDER MOHAN MAHENDRU Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
08.08.2016

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CM No. 28312/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 753/2016 and CM No. 28311/2016 (interim orders)

1. By the present petition, the petitioner seeks to impugn the order dated 14.07.2016 by which his application to amend the written statement was dismissed. The petitioner is the son of the respondent. The respondent filed a suit for permanent injunction against the petitioner to pass a decree of permanent injunction against the petitioner, his agents from taking lawful possession of the respondent's business i.e. M/s. Highway Motors and Traders or business premises No.2737, Ramlal Chandok Marg (Minerva Lane), Kashmiri Gate, Delhi. The trial court decreed the suit deciding all the issues in favour of the respondent and restraining the petitioner from interfering or taking lawful possession of the respondent's business. The petitioner has thereafter filed the present appeal.

2. During the pendency of the appeal, the petitioner has moved the present application under Order 6 Rule 17 CPC.

3. It was the contention of the respondent in the suit that the father of the respondent, namely, Sh. Ramji Dass Mahendru had taken the shop in question on rent in 1948. Thereafter, the respondent joined his father in the business. There were various changes in the formation of business between the respondent and his father. The father of the respondent expired on 24.03.1979. It was averred in the plaint that in 2002, various partners who were running various businesses in the shop settled in their own businesses. The respondent thereafter started his firm M/s. Highway Motors and Traders as a sole proprietor and the rent is also being paid by the said firm. The firm is registered with the Sales Tax Department. It was on these averments that the suit was decreed.

4. Now, by the present application under Order 6 Rule 17 CPC, the petitioner seeks to essentially add two facts to his written statement.

5. Firstly, he seeks to introduce the claim of legal heirs of his deceased grandfather/father of the respondent i.e. Late Sh. Ramji Dass Mahendru. Thereafter, he also seeks to add that there was an amicable settlement between the parties and with two other persons, namely, Sh. Raj Kumari Mahendru, the mother of the petitioner/wife of respondent and Sh. Amit Mahendru i.e. the brother of the petitioner whereby the respondent handed over the key and physical possession of the shop to the petitioner.

6. The trial court dismissed the application for the following reasons:-

- a. The petitioner admitted in the written statement about the possession of the respondent in the shop. Hence, reference to the LRs of the erstwhile tenant of Ramji Dass Mahendru was irrelevant.

- b. The alleged settlement executed on 06.08.2006 is not essential for adjudicating the present suit.
 - c. Further order sheets of the trial court reveal that no such compromise could be affected between the parties.
7. I have heard the learned counsel for the parties.
8. Learned counsel for the petitioner relies on the judgments of this court in the case of *Jagdish & Ors. vs. Harsarup, (1978) 14 DLT 66, Raj Rani & Anr. Vs. Sumitra Parashar & Anr., 207 (2014) DLT 766* and *Smt. Sumitra Parashar & Anr. vs. Smt. Raj Rani & Anr. FAO(OS) 178/2014 dated 02.07.2014* to contend that the present amendments are necessary to determine the real question in controversy between the parties. He also submits that the settlement was after filing of the suit in July 2006 and delay in filing the present application cannot be a ground to reject the present application.
9. In my opinion, there are no reasons to differ with the view of the trial court. The written statement was filed in July 2006. The settlement has allegedly taken place immediately thereafter on 06.08.2006. The suit was decreed on 31.08.2013. There is a clear delay of more than 8 years in trying to move this application. There are no reasons given for this long delay in trying to introduce this document.
10. As far as reference to the LRs of Late Sh. Ramji Dass Mahendru is concerned, the proposed amendment is again not relevant to the proceedings. Sh. Ramji Dass Mahendru died in 1979. 35 years later to try to now introduce averments about the rights of the LRs of Late. Sh. Ramji Dass Mahendru and the inheritance is a misplaced contention having no relevance. The trial court rightly held that the petitioner never disputed the

stand of the respondent about the possession of the suit property.

11. In fact a perusal of the written statement filed by the petitioner shows that it was his case that the business of M/s. Highway Motors and Traders was being carried out by the respondent on behalf of Smt.Raj Kumari Mahendru i.e. his mother. The original rent receipt, it is claimed, is with the mother. Hence, the stand of the petitioner now to try to introduce the LRs of the deceased grandfather has no bearing on the suit.

12. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J.

AUGUST 08, 2016/rb