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

+ CM(M) 799/2016

VIJAY KUMAR BAJAJ & ANR Petitioners
Through Mr.Shiv Kumar Sharma, Advocate.
versus
GEETA NARULA & ANR Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **19.08.2016**
CM No. 30150/2016 (exemption)

Exemption is allowed subject to just exceptions.

CM(M) 799/2016 and CM No. 30149/2016 (stay)

1. By the present petition, the petitioners seek to impugn the order dated 09.05.2016 by which the application under Order 1 Rule 10 CPC to implead Ms.Prabha Vasudev was allowed.
2. Respondent No.1 filed a suit for recovery of possession, arrears of damages, mesne profits, etc. against respondent No.2 regarding the suit property at Anand Parbat, Industrial Area, New Delhi. The petitioners, however, claim that respondent No.2 had vacated the suit premises on 31.03.2011 and that the petitioners have now as owners inducted a new tenant on 02.04.2011 i.e. Ms.Prabha Vasudev. The petitioners also moved an application under Order 1 Rule 10 CPC to be impleaded as parties. The said application was allowed on 10.07.2013. Subsequently, respondent No.1 has moved the present application based on the averments of the petitioners in

the application under Order 1 Rule 10 CPC seeking to implead Ms.Prabha Vasudev as a party to the suit.

3. The trial court by the impugned order in order to avoid multiplicity of proceedings allowed the application and Ms.Prabha Vasudev was impleaded as defendant No.4 and an opportunity was also given to respondent No.1 to amend the plaint as well as the memo of parties accepting the contention of the counsel for respondent No.1 that respondent No.1 was awaiting decision of the present application under Order 1 Rule 10 CPC for filing amended plaint in this case.

4. Learned counsel appearing for the petitioners has vehemently argued that the right of respondent No.1 to file an amended plaint was closed long back. He relies upon various orders which are reproduced in his petition including order dated 29.01.2014 wherein it is noted that an opportunity for filing amended plaint stands closed in terms of order 6 Rule 18 CPC. He submits that the impugned order to the extent it permits respondent No.1 to amend the plaint is contrary to the said order and ignores that there is a gross delay on behalf of respondent No.1 in amending the plaint.

5. Order 1 Rule 10 (4) CPC reads as follows:-

“10. Suit in name of wrong plaintiff.-

xxx

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

xxx”

6. Hence, when a defendant is added as a party, the plaint is liable to be amended in such a manner as may be necessary. Hence, once the petitioners had been added as a party, it was necessary to amend the plaint and an opportunity to that extent was granted.

7. Order 6 Rule 18 CPC deals with a case where a party has himself moved for amendment of the pleadings under Order 6 Rule 17. Once an application under Order 6 Rule 17 is allowed, Order 6 Rule 18 provides that the amendment has to be carried out within the time limited for that purpose by the order and in the absence of any stipulation of time, within 14 days from the date of the order.

8. Order 6 Rule 18 CPC would have no application to this case. The contention of the petitioner about delay in amending the petition is not relevant.

9. The trial court by the impugned order concluded that the delay in amending the plaint took place as the application under Order 1 Rule 10 CPC to implead Ms.Prabha Vasudev was pending. It may be noted that the application by the petitioners to be impleaded was allowed on 10.07.2013. The respondent No.1 has filed an application under Order 1 Rule 10 CPC to implead Ms.Prabha Vasudev on 17.10.2013. It cannot be said that there was unreasonable delay. Once the petitioners were impleaded, the plaint would normally require amendments. Same would be the case once Ms.Prabha Vasudev was impleaded.

10. Learned counsel for the petitioner has further submitted that he has never filed his written statement and the impugned order wrongly noted that he has. Presumably this was a typographical mistake and the petitioner

would have liberty to file written statement as and when required.

11. There are no reasons to differ with the order of trial court. Petition is without merit and is dismissed.

JAYANT NATH, J

AUGUST 19, 2016/rb

