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

+ CM(M) 928/2016

M/S MARUTI ELECTRONICS Petitioner
Through Mr.Triloki Pandit, Advocate

versus

M/S MOBILE BAZAR & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
19.09.2016

CM No.34170/2016 (exemption)

Allowed subject to all just exceptions.

TR.P.(C.) 84/2015 & CM No.34171/2016

1. By the present petition, the petitioner seeks to impugn the order dated 02.05.2016 by which an application filed by the petitioner under Order 6 Rule 17 CPC was dismissed.
2. The amendment sought is very limited. The petitioner has filed a suit for recovery of Rs.17,30,229.00. It is stated that in the memo of parties to the plaint, the suit is said to be filed through its partner whereas it is actually filed through Sh.Manoj Gupta, authorised signatory. Further in the plaint, it is stated that the same mistake has been stated in para 1 of the plaint. By the amendment it is sought to clarify that the authorised representative is not a partner.

3. The trial court dismissed the application drawing attention to the fact that at several places, Sh.Manoj Gupta was called as authorised partner and has been described as partner including in an authority letter and affidavit by way of evidence. The trial court, hence concluded that the description of Sh.Manoj Kumar as partner in the suit is not an inadvertent mistake and dismissed the application as not bona fide.

4. Advance copy of the petition has been served on the respondents by the petitioner. The learned counsel for respondent No.3 has been served in person. Despite service, none is present for the respondents before this court.

5. A perusal of the plaint shows that in the cause title, it is stated “M/s Maruti Electronics Through its Partners”. In para 1, it is stated that the suit is filed through Sh.Manoj Gupta, authorised signatory duly authorised by other partners to file the present suit. Hence, in the plaint, in fact there is no averment that Sh.Manoj Gupta is a partner.

6. The suit is said to be filed for recovery by an alleged registered partnership firm. There is no issue framed regarding the authority of Sh.Manoj Gupta to file the present plaint on behalf of plaintiff firm. It is an innocuous mistake which is sought to be corrected. In fact, reading of the impugned order does not show as to what prejudice is caused to the respondents in case the present application is allowed.

7. The amendment is necessary for the purpose of determining the real controversy between the parties.

8. Reference maybe had to the judgement of the Supreme Court in the case of M/s ***Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91***. Relevant para reads as follows:

“4. It is clear from the foregoing summary of the main rules

of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

9. Accordingly, the present petition is allowed. The application for amendment filed by the petitioner is also allowed, subject to costs of Rs. 5000/-. All the pending applications are also allowed.

JAYANT NATH, J.

SEPTEMBER 19, 2016/v

