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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 913/2016 & CM Nos.33433-33434/2016 & 40507/2016
BALJEET SINGH (DECEASED) THR LRS Petitioner
Through Mr.Atul Ahuja, Advocate

versus

DADA DEV MANDIR PRABHANDAK SABHA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
03.11.2016

1. By the present petition filed under Article 227 of the Constitution of India the petitioners seek to impugn the order dated 20.8.2016 by which an application under Order 6 Rule 17 CPC filed by the petitioner was dismissed. The suit is filed by the respondents for possession, recovery of arrears of rent/mesne profits/damages and permanent injunction. The suit is filed by the respondent Dada Dev Mandir Prabhandak Sabha (Barah Gaon) Palam.
2. The parties have led evidence and after completion of evidence the petitioner chose to file an application under Order 6 Rule 17 CPC seeking amendment of the written statement. It was sought to be added in the written statement that there exists no relationship of landlord and tenant between the parties and that according to the petitioner the landlord is "Dada Dev Mandir" which is a separate entity as compared to the respondent.
3. The trial court by the impugned order dismissed the application. The

trial court on a reading of the written statement came to a conclusion that there is an admission on the part of the petitioner that he is the tenant of the respondent and that the purported amendment is an attempt to withdraw the admission. It also noted that trial has already commenced and in terms of proviso to Order 6 Rule 17 CPC the petitioner has to show that despite due diligence he could not raise the issue which is now sought to be raised by way of amendment before commencement of the trial. The application was accordingly dismissed.

4. Learned counsel for the petitioner submits that there is no admission in the written statement. He relies upon paragraph 3 of the preliminary objections read with paragraph 5 to contend that the stand has always been that the rent receipts were issued by the temple and not by the respondent, It is submitted that by recording a finding of admission, grave prejudice would be caused to the petitioner by the impugned order.

5. It was put to learned counsel for the petitioner that at this stage when evidence is complete, if amendment is allowed, the entire nature of the suit would possibly undergo a change especially keeping in view the fact that no such issue has also been framed by the trial court. The only apprehension expressed by the learned counsel appearing for the petitioner was that the trial court has concluded about the admission of the petitioner that he has accepted the respondent as a tenant.

6. In my opinion, there is no infirmity in the impugned order to warrant interference by this court, especially keeping in view the fact that the petitioner moved the amendment application at a very late stage. Regarding the apprehension of the petitioner that the trial court has come to a conclusion which would bind the petitioner at the stage of final adjudication

of the suit, the apprehension is misplaced. The observations have been made for the purpose of disposal of the application under Order 6 Rule 17 CPC and obviously the petitioner would be free to urge his submissions at the time of final adjudication of the suit in accordance with law.

7. With the above, the present petition stands dismissed. All pending applications are also dismissed.

JAYANT NATH, J

NOVEMBER 03, 2016

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