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

\+ CM(M) 613/2015 & C.M. Nos.11801/2015 & 22664/2015

ASHISH ..... Petitioner

Through Mr. Anand Yadav, Advocate

versus

DALAWAR SINGH ..... Respondent

Through Mr. Anil Dagar, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% 29.01.2016

The plaintiff is aggrieved by the impugned order dated 19.01.2015 vide which the application filed by the plaintiff under Order 6 Rule 17 of the CPC seeking an amendment in the plaint has been declined. The record shows that the plaintiff originally filed a suit for recovery of Rs. 13 lakhs. The averments made in the plaint disclose that the parties have entered into an agreement to sell dated 18.08.2009 and this sum of Rs. 13 lakhs was paid as an advance by the plaintiff to the defendant. Another further part of the plaint (unamended) shows that plaintiff in this plaint had also made specific averment that he was ready and willing to perform his part of the contract. This is contained in para 14 of the un-amended plaint. Written statement was filed. The defences taken in the written statement may not be relevant for deciding the present application. Before issue could be framed the present application seeking amendment of the plaint was filed; this was on 04.06.2011. The contention of the plaintiff was that he wanted to add the relief praying for

a decree of specific performance in terms of already averred averments made in the earlier plaint regarding agreement to sale dated 18.08.2009. His submission is that this relief which is now claimed in terms of the amendment application would not change the nature of the suit. The impugned order had declined this prayer. The impugned order was of the view that the claim now sought to be set up by the plaintiff would be barred by time and his averment that he is ready and willing to perform his part of the contract was missing in the unamended plaint.

This factual narration as noted by the Trial Court is incorrect as even in the unamended plaint an averment had been made by the plaintiff that he is ready and willing to perform his part of the contract. The question as to whether the relief now claimed is barred by the time or not can be taken up before the Trial Court at the time when the issues are struck by the Court as issues are yet to be framed. This is especially in view of the warring contentions between the parties and this would thus become a mixed question of law and fact.

Learned counsel for the petitioner placed reliance upon a judgement of the Coordinate Bench of this Court reported as AIR 1992 Delhi 9 *M/s Allahabad Law Journal Co.Ltd. Vs. M/s Skyways Construction Corporation and Ors.* wherein on the similar factual matrix, the question of limitation was kept remain open.

Noting the above factual matrix as also the legal preposition cited by the counsel for the petitioner, the impugned order is set aside. Prayer made in the application is allowed; amended plaint be taken on record subject to payment of Rs.5000/-. Written statement to the amended plaint be filed in two weeks with advance copy to the petitioner who may

file rejoinder before next date.

Petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

JANUARY 29, 2016
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