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

+ CM(M) 1015/2016

HAMID KHAN

..... Petitioner

Through Mr.Aruna Mehta and Mr.Sanjeev
Mehta, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ANR..... Respondents

Through Mr.G.D.Mishra, standing counsel for
R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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04.10.2016

CM No. 37043/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 1015/2016

1. By the present petition, the petitioner seeks to impugn the order dated 13.07.2016 by which an application filed by the petitioner under Order 6 Rule 17 CPC was dismissed.
2. The petitioner has filed the suit for permanent injunction against the respondents to restrain the respondents from impounding cattle of the petitioner from his present address till the allotment of a diary plot to the petitioner and also to direct the respondents to verify the fact of existence of diary at the noted address and to allot a plot at Ghoga Diary Colony as per rules and regulations. The plaint noted the address from where the diary is

being run as E-25, B-29/627, Indira Camp, Trilokpuri, Delhi.

3. The suit was filed on 19.03.2010. Now, in 2016 the petitioner has moved the present application for amendment stating that the steno who had taken down the dictation to type the plaint was hard of hearing and could not hear the other address of the petitioner, namely, 30/475, Trilok Puri, Delhi but he only heard the second address which is mentioned in the plaint. Due to this, the second address in the plaint was not reproduced. It is also stated that the earlier counsel was having weak eye sight and was addicted to wine and could not check the amended plaint properly and filed the plaint without necessary corrections. It is further stated that due to poverty and illiteracy, the petitioner was not in a position to spend money for certified copies and requested the counsel several times to return the file as the said counsel was not attending the court regularly. Thereafter, it is stated that the petitioner engaged his relative who after going through the file noted the lapses in the body of the plaint. Hence, the present application for amendment.

4. A perusal of the application shows that it seeks to add the relief of declaration seeking a decree of declaration that the inspection carried out by the respondents on 09.02.2008, 16.04.2008 and 01.04.2010 be declared null and void. It also seeks to reproduce the second address to state that the diary is also being run from the said address i.e. 30/475, Trilok Puri, New Delhi. Other miscellaneous facts to support the said contention are also sought to be added.

5. The trial court by the impugned order noted that the case was originally filed by the counsel-Sh.Pradeep Katara. Subsequently, vakalatnama was filed by another counsel, namely, Sh. P.K.Srivastava who also filed an application for amendment dated 21.11.2011. The said

application was withdrawn. The said counsel-Sh. P.K.Srivastava also filed an application under Order 39 Rules 1 & 2 CPC. Hence, the trial court concluded that the contention of the petitioner that the previous counsel did not pursue his case diligently due to addiction of wine appears to be an afterthought. Especially, in view of the fact that no name of the counsel has been mentioned in the application who did not pursue the case diligently. The trial court also noted that the cause of action for the relief of declaration accrued in 2010 itself which has now become time barred. The application was accordingly dismissed.

6. Learned counsel appearing for the petitioner has reiterated the submissions made in the application stating that the petitioner is illiterate and could not comprehend the proceedings as no counsel explained to him the proceedings.

7. Learned counsel appearing for the respondent has pointed out that in the written statement it was clearly stated that pursuant to directions of the High Court in CWP 3791/2000 titled as *Common Cause Society vs. Union of India & Ors.*, a modern diary colony was being developed for re-location of eligible diaries from urban lands. On 08.03.2007, the High Court appointed six member Stray Cattle Committee to carry out its directions. As per the verification/inspection conducted by the Zonal Verification Team which was constituted by the Committee on 09.02.2008 in the presence of the petitioner, no diary was found at his diary address. It is further stated that this was duly communicated to the petitioner on 01.04.2010. Written statement was filed in 2010 itself.

8. In the light of this fact, the petitioner now six years later seeks a decree of declaration to declare the inspection report dated 09.02.2008 and

other consequential documents as void. In my opinion, in the facts and circumstances of the case, the relief sought is clearly barred by limitation. The petitioner cannot plead ignorance of the contents of the written statement filed in his own suit on the various grounds stated in the application. The amendment sought to introduce a time barred claim and cannot normally be permitted(*see: Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91*).

9. Even otherwise these are inspections/verifications carried out pursuant to the directions of the High Court in CWP 3791/2000.

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

JAYANT NATH, J

OCTOBER 04, 2016

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