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

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Date of Decision: 21.10.2016

+ CM(M) 1033/2016 and CM No.38016/2016

VISHAL KUMAR Petitioner
Through Mr.Ashim Shridhar and Mr.
Siddharth Gupta, Advocates.

versus

SATJIT SINGH WALIA Respondent
Through Mr.P.K.Rawal and Mr.Tarun
Agarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 29.03.2016 to the extent that it dismissed the application for amendment filed by the petitioner for non-prosecution, the order dated 27.04.2016 by which the trial court declined to recall its earlier order dated 29.03.2016 and to set aside the order dated 10.05.2016 to the extent that the said order directed postponement of the review application of the petitioner praying for review of the foresaid order dated 27.04.2016.

2. The background facts of the case are that respondent/plaintiff has filed the suit for possession, recovery of arrears of rent/mesne profits/damages for the property bearing No. F-34, Flat No. 6, East Jyoti Nagar, Shahdara, Delhi.

It is averred in the plaint that in the lease deed dated 08.02.2011 was executed between the parties and the property was let out for 11 months w.e.f. 08.02.2011 to 31.12.2011 @ Rs.7,900/- per month.

3. The respondent filed an application under Order 12 Rule 6 CPC seeking a decree in view of the admissions of the petitioner. The petitioner filed the present application under Order 6 Rule 17 CPC seeking to amend the written statement due to change of circumstances/subsequent developments. Two paras are sought to be added in the written statement which read as follows:

“8. That the defendant has purchased the property in question from Afzal Ahmed, thereafter the said defendant has become the lawful owner, who is also in peaceful possession of the suit property, hence the suit is not maintainable against the defendant.

9. That, the plaintiff is not entitle to the relief as prayed in the present suit, in view of the purchasing the suit property by the defendant, hence the present suit is not maintainable in the present form, plaintiff is not the landlord of the defendant, and the defendant is also not the tenant in respect of the suit property.”

4. The genesis of the amendment was that it was claimed by the petitioner that one Sh. Naresh Kumar Jain purchased the property vide GPA, agreement to sell, affidavit, receipt and will dated 08.04.2010 from the plaintiff/respondent. The said Naresh Kumar Jain thereafter is said to have sold the property by the same nature of documents to one Sh. Afzal Ahmed on 12.10.2015. The petitioner is said to have purchased the property in question from the said Sh. Afzal Ahmed based on the same nature of documents on 15.10.2015. These two transactions took place within a short

span time i.e. within two days.

5. On 29.03.2016 the application of the petitioner under Order 6 Rule 17 was listed. The trial court noted that the petitioner is seeking an adjournment on the ground that his counsel is busy in the Supreme Court. Noting that the application has been pending since long and on one pretext or the other, the petitioner has been seeking adjournments for arguments, the application was dismissed for non-prosecution on 27.04.2016.

6. Thereafter, the petitioner has moved an application under Section 151 CPC for restoration of the application moved under Order 6 Rule 17 CPC for amendment of the written statement. This application was heard on 27.04.2016. The trial court noted that the case has been pending since 2012 and neither the application for interim relief nor the application moved under Order 12 Rule 6 CPC by the respondent could be decided till date and that it is reflected from the previous conduct of the petitioner/defendant that he is causing unnecessary delay in the present matter and even no sufficient ground/explanation is given by the defendant for not diligently pursuing the amendment application despite giving four consecutive opportunities therefore, the application under Order 6 Rule 17 CPC was dismissed for non-prosecution. This application under Section 151 CPC was also dismissed on 27.04.2016.

7. I am informed that apart from these applications, the petitioner has also filed an application for review under Section 114 and Order 47 CPC seeking review of the order dated 27.04.2016. The review is pending. In the meantime, the trial court vide its order dated 10.05.2016 allowed in part the application under Order 12 Rule 6 CPC filed by the respondent in respect of possession. In respect of the recovery of arrears of rent/mesne

profits/damages, the trial was to continue.

8. Though a copy has not been placed on record along with the petition and there is only a sketchy reference to the same, the petitioner filed an appeal against the said order dated 10.05.2016 before the appellate court. The appellate court of the Additional District Judge dismissed the appeal giving one month's time to the defendant/petitioner to vacate the suit property, on expiry of which the respondent was entitled to get the decree executed through police help. The appellate court noted the alleged transactions which are sought to be introduced by way of an amendment in the application. The trial court also noted that the said Sh. Naresh Kr. Jain who is said to have originally bought the property from the plaintiff/respondent moved an application under 1 Rule 10 CPC for impleadment as a party which application was dismissed on 06.06.2015 and that order was not challenged. It noted that the documents relied upon by the petitioner for claiming purchase of the property from Sh. Afzal Ahmed and also the documents through which Sh. Afzal Ahmed has bought the property from Sh. Naresh Kumar Jain are unregistered GPA, Agreement to Sell, Receipt, etc. The appellate court noted that the documents being unregistered and not properly stamped are hit by Section 17 of the Indian Registration Act and Section 23A of the Stamp Act. The documents are inadmissible in evidence and do not confer any right, title or interest in the suit property. The appellate court also noted that the protection of part performance under Section 53A of the Transfer of Property Act cannot be claimed by the petitioner. It also relied upon the judgment of the Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana (2012) 1 SCC 656* to hold the transactions to be illegal.

9. Learned counsel appearing for the petitioner has vehemently argued that all these orders have been passed without hearing the petitioner. It is stated that all what the petitioner wants is a hearing of the application filed Order 6 Rule 17 CPC which was dismissed in default. It is submitted that the application under Order 12 Rule 6 CPC was also heard without an opportunity being granted to the petitioner to make his submissions in this regard.

10. Learned counsel appearing for the respondent has vehemently argued that both the parties are practicing advocates and that the process of the court is being abused by the petitioner. He submits that even the rent at the agreed rate is not being paid by the petitioner. He points out that in the written statement the petitioner has claimed to have paid up to May 2012, though the rent has not been paid since July 2011. He points out that even admittedly since May 2012 no rent is being paid by the petitioner.

11. In my opinion, there are no reasons to interfere with the view of the trial court. The matter has been pending since 2012. Four opportunities have been given to the petitioner to address arguments on the application under Order 6 Rule 17 CPC. Despite these opportunities, the petitioner did not avail the same and cannot now be allowed to complain that he has not been heard.

12. I have also examine the amendment application on merits. A perusal of the proposed amendment shows that these amendments cannot be termed to be bona fide for the purpose of adjudication of the dispute between the parties. The suit has been filed in 2012. Despite pendency of the suit the petitioners who are stated to be lawyers have chosen to purchase the property by a set of unregistered documents. It is claimed that one Shri

Narender Kumar Jain purchased the property from the respondent vide GPA, Agreement to sell, affidavit, receipt and will dated 8.4.2010. Thereafter the said Shri Narender Kumar Jain has sold the property by the same nature of documents to one Afzal Ahmed on 12.10.2015 and through similar documents to the petitioner on 15.10.2015. The petitioner claims to have purchased the suit property based on an unregistered GPA, unregistered Agreement to Sell, affidavit, receipt, bill etc. It is clear that in the light of the judgment of the Supreme Court in ***Suraj Lamps Industries Ltd. vs. State of Haryana (supra)*** these documents confer no title on the petitioner.

13. To look at accepted principles of amendments, reference may be had to the judgment of the Supreme Court in the case of ***'Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.'***, 2009 (13) SCALE 241.

The Hon'ble Supreme Court in para 67 held as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerges which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - (2) Whether the application for amendment is *bona fide* or *mala fide*?
 - (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
- And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

14. The transaction that is sought to be introduced by way of amendment shows complete lack of bona fide. It appears to be an attempt to delay the proceedings and use dilatory tactics to somehow retain the suit property without payment of rent. The trial court has rightly declined the request of the petitioner to restore the application for amendment as it lacks bona fide and is an attempt to delay the proceedings. There is no merit or equity in favour of the petitioner.

15. The petition is accordingly dismissed.

JAYANT NATH, J

OCTOBER 21, 2016/rb/n