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

+ CM(M) 1064/2016

INDIRA GANDHI LIBRARY SOCIETY & ANR Petitioner

Through Mr.Sanjeev Sindhvani, Sr.Adv. with
Mr.Pushkar Sood and Ms.Akshita Chhatwal,
Advocates

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr.Kavindra Gill, Advocate for UOI/
R-1

Ms.Aayushi Gupta, Advocate for Mr.Raman
Duggal, Standing counsel for GNCTD (Civil) with
Mr.Rahul Kumar and Mr.,Dhirender Bhatt, BDO,
Najafgarh for R-2 to R-5

Mr.Ashutosh Ghade and Mr.Nikhil Goel,
Advocates for DDA/R-6

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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24.10.2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 15.12.2015 by which an application filed by the petitioner under Order VI Rule 17 CPC for amendment of the plaint was dismissed.

2. The petitioners have filed the present suit for perpetual injunction to restrain the respondents from interfering and disturbing the working of the library of petitioner No.1 and its members situated at Village Nasirpur, Delhi. The suit was filed in 1990. The background of the proposed amendment is a communication issued by the Block Development Officer in July 2005 where he has pointed out that an inspection of the site showed that there is Indira Gandhi Library on the said Khasra No.109 whereas the land

is stated to be of Gram Sabha. The BDO requested for commencement of ejection proceedings. Pursuant thereto the proceedings under section 86A of the Delhi Land Reforms Act are said to have been initiated and notice was issued to the petitioner on 24.10.2005. These facts are sought to be incorporated by way of amendment of the plaint.

3. By the impugned order the trial court noted that the evidence of the petitioners have commenced and that the petitioners have failed to give any cogent reasons for filing of the amendment application after commencement of trial. It also noted that if the amendment application is allowed it will scuttle the court proceedings whereas dismissal of the application will not affect the plaintiff as the plaintiff would have ample opportunity to prove his claim to the suit property during the course of trial by leading ocular evidence. The application was accordingly dismissed.

4. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioner has submitted as follows:-

(a) He submits that the trial court has wrongly interpreted the proviso to Order VI Rule 17 CPC. He points out that as per The Code of Civil Procedure (Amendment) Act, 2002 when the proviso was added to Order VI Rule 17 it was clarified that the said amendment was not applicable in respect of any pleadings filed before the commencement of the Amendment Act. He also relies upon judgment of the Supreme Court in *State of Bank of Hyderabad vs. Town Municipal Council, 2007 (1) SCC 765* to contend that as the suit is filed prior to the amendment of Order VI Rule 17 CPC, the proviso would not apply.

(b) He secondly submits that the stand of the respondents/defendants

in their written statement has been that they have denied the possession of the petitioners all along. He submits that the present developments whereby proceedings under section 86-A of the Delhi Land Reforms Act have been commenced are clear pointer to the fact that the respondents excepts that the petitioner is in settled possession of the property. Hence, the need to place these facts on record by way of the amendment.

- (c) On being pointed out that there is a delay of almost 10 years inasmuch as the proceedings under section 86A commenced in 2005, he submits that no prejudice is caused to the respondents and that they can be easily compensated by means of costs.

5. A perusal of The Code of Civil Procedure (Amendment) Act 2002 shows that the proviso to Order VI Rule 17 was not to be applicable in respect of pleadings filed prior to commencement of the Amendment Act. The Supreme Court in *State of Bank of Hyderabad vs. Town Municipal Council (supra)* noted section 16(2) of the Amendment Act of 2002 as follows:-

7 Section 16(2) of the Amending Act of 2002 reads as under:

16(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 .

(a) * * *

(b) the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of

any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;

8 In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order VI, Rule 17 of the Code shall not apply.”

8 In light of the above legal position it is clear that the proviso to Order VI Rule 17 CPC would not be applicable to the present case where the plaint was filed in 1990 i.e. prior to the relevant amendment of CPC.

9 As far as the necessity of the amendment is concerned, a perusal of the written statement filed by the respondent would show that the respondents have denied that the petitioners are in possession of the suit property. Accordingly, it is appropriate that the proposed amendment noting that the respondents have initiated proceedings under section 86A are incorporated in the plaint inasmuch as the proposed amendment would be necessary for the purpose of determining the real questions in controversy between the parties. Accordingly, the present petition is allowed, subject to payment of costs of Rs.25,000/- to the Delhi Legal Aid Services. Application for amendment is accordingly allowed. All pending applications, if any, also stand disposed of accordingly.

10 Dasti.

JAYANT NATH, J

OCTOBER 24, 2016

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