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

+ CM(M) 1286/2016

PHOOL KUMAR Petitioner
Through Ms.Ananya Prajapati, Advocate

versus

SHIV CHARAN (DECEASED) THR LRS. Respondent
Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **16.12.2016**

CM No.46161/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 1286/2016 & CM No.46160/2016 (*stay*)

1. By the present petition, the petitioner seeks to impugn the order dated 07.09.2016 and subsequent order dated 05.11.2016 whereby the application of the respondent under Order 6 Rule 17 CPC was allowed.
2. As per record, the suit has been filed by the respondent for specific performance against Smt.Santosh Devi (defendant No.1 in suit). The petitioner has thereafter been impleaded in an application under Order 1 Rule 10 CPC.
3. As per the application under Order 6 Rule 17 CPC filed by the respondent, it is submitted that the alleged transaction between defendant No.1 (Smt. Santosh Devi) and the petitioner is a sham transaction and the petitioner never came into possession of the suit property. It also seeks to add the relief of declaration that the alleged sale deed dated 03.03.2009 be

set aside and declared as null and void and nonest.

4. The trial court on 07.09.2016 noted that the counsel for the respondent has no objection to the amendment. Accordingly the amendment application was allowed.

5. Thereafter, the petitioner has moved the application under Section 114 CPC arguing that no concession was made by the learned counsel by the petitioner as has been recorded by the trial court in its order dated 07.09.2016. The trial court noted the merits of the matter and held that the amendments are in any case necessary keeping in view the subsequent developments and allowed the application.

6. I have heard the learned counsel for the petitioner.

7. The learned counsel for the petitioner has stressed that the counsel for the petitioner was not present on 07.09.2016 and hence, no concession could have been made. She also points out that the respondent has moved this application for amendment now in year 2016 whereas a copy of the sale deed in question which is sought to be declared as null and void has been received by them on 15.03.2012 and hence it is stated that the application is delayed beyond the period of limitation.

8. In my opinion, there is no merit in the contention of the petitioner. The amendment seeks to bring on record the subsequent developments as petitioner claims to have purchased the property during the pendency of the suit vide sale deed dated 03.03.2009. The suit is filed on 03.06.2010. Hence, after filing of the suit the petitioner claims to have bought the property vide sale deed dated 03.03.2009. The respondent contends that this creates cloud over his right and hence, also seeks to add a prayer that the sale deed between the petitioner and Smt. Santosh Devi be set aside and be declared as

null and void. Supporting submission are sought to be added.

9. The Supreme Court in *Pankaja & Anr. v. Yellappa & Anr., 2004(6) SCC 415*, held that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. There is discretion in such cases and it depends upon facts and circumstances of the case. The Supreme Court held as follows:

“14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends upon the factual background of that case.”

10. The trial court has exercised his jurisdiction as per law. There is no reason to interfere with the impugned order. The present petition is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

DECEMBER 16, 2016/v