$~A-12

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

\+ C.R.P. 108/2015

SATNAM SINGH ..... Petitioner

Through Mr.G.S.Sharma, Mr.V.K.Sharma and Mr.R.A.Sharma, Advs.

versus

HEMANT LAMBA ..... Respondent

Through Mr.Pawan Kr.Sisodia, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 02.12.2016

1. By the present petition under section 115 of the CPC the petitioner seeks to impugn the order dated 4.6.2015 by which the plaint filed by the plaintiff under Order 7 Rule 11 CPC was rejected for non payment of the court fees.

2. On 6.4.2015 the trial court noted that the plaintiff/petitioner has prayed for grant of interest @ 18% per annum from the date of execution of the partnership deed dated 19.6.2011 till its realisation on the principal amount of Rs.15 lacs. The trial court hence held that the petitioner is required to valuate the suit for relief of pre-suit interest, till the date of filing of the suit. Directions were passed to valuate the suit accordingly and pay the court fees. As the petitioner failed to comply with that direction of 6.4.2015 the plaint was rejected.

3. Learned counsel appearing for the petitioner has submitted that the suit is for recovery of Rs.15 lacs alongwith interest @ 18% per annum and the court fee on Rs.15 lacs had been paid. Hence, at best the court could have disallowed the relief regarding interest @18% per annum from the date

of the partnership deed dated 9.6.2011, till filing of the suit. He secondly submits that in any case prior to passing of the impugned order dated 4.6.2015 the petitioner had moved an application under Order 6 Rule 17 CPC whereby he had sought to amend the plaint and had sought interest @ 18% per annum only from the date of filing of the suit i.e. pendente lite interest. He submits that without adjudicating the present application filed prior to 4.6.2015 the trial court has passed the impugned order.

4. Learned counsel appearing for the respondent has submitted that in his application under Order 6 rule 17 CPC apart from other amendments the petitioner has also sought to add averments about alleged oral demand being made to try and cover the lacunae of the plaintiff of the suit being barred by limitation.

5. In my opinion, the fact that the petitioner had filed the court fees on a sum of Rs.15 lacs has not been dealt with by the trial court. In any case, the petitioner having filed an application under Order 6 Rule 17 CPC the same should have been adjudicated upon first. There is clearly a material irregularity in the impugned order. The same is accordingly quashed. The suit is restored. The trial court may first adjudicate the application under Order 6 Rule 17 CPC and thereafter may proceed with the matter.

6. With the above, the present petition stands disposed of. Pending applications, if any, also stand disposed of accordingly.

7. Parties to appear before the concerned trial court on 9.2.2017.

JAYANT NATH, J

DECEMBER 02, 2016/n