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

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CM(M) 1060/2015

MAHINDER SINGH DOGRA

..... Petitioner

Through

Mr. Shiv Charan Garg and Mr. Imran  
Khan, Advs.

versus

J K DASS GUPTA & ANR

..... Respondents

Through

None.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

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**25.01.2016**

**CM(M) 1060/2015 & C.M. Nos.25114/2015 & 2877/2016**

The petitioner is aggrieved by the impugned order dated 02.09.2015 vide which his application seeking amendment of the plaint was declined.

Record shows that the present suit is a suit for specific performance and permanent injunction filed by the plaintiff on the basis of an agreement to sell qua an immoveable property i.e. two flats on ground floor in property bearing No. CS/91/425, Gali No. 8, East Azad Nagar, Village Ghondi, Illaqa Shahdara, Delhi.

The plaint filed before the Trial Judge has been perused. The averments in the plaint clearly disclose (in para 3) that the defendants have received an amount of Rs.1,60,000/- on 20.01.2005 and again another amount of Rs.1,60,000/- on 30.11.2005 besides on 16.01.2006 a further amount of Rs. 2 lacs was paid to the defendants. Learned counsel

for the petitioner has also drawn attention to the written statement filed by the defendants wherein they have admitted that the plaintiff has paid a sum of Rs.3,20,000/- but the amount now stood forfeited; this was the defence raised by the defendants.

Issues were framed. Parties led their evidence. This Court has been informed that today the matter is fixed for final arguments before the Trial Judge. Present application was filed on 11.04.2014; even at that stage, the alternate relief for claim of the earnest money of Rs.5,20,000/- has inadvertently not being mentioned in the prayer clause; this being only a bonafide and inadvertent error, it will not change the nature of the suit and the amendment be allowed. Reply filed to the present application has been perused. There is no substantial defence except that it will change the nature of the suit.

This Court is not in agreement with the submissions of the learned counsel for the defendants which were noted by the Trial Court while passing the impugned order. Section 22 of the Specific Relief Act also come to the aid of the plaintiff/petitioner which admittedly state that if the plaintiff has not claimed the alternate relief for earnest money, it can amend the plaint at any stage. He be permitted to amend the plaint. Learned counsel for the petitioner submits that even if the proviso to Order 6 Rule 17 of the CPC is taken into account, the non-applicant/defendant can be compensated with costs. This Court again notes this submission of the learned counsel for the petitioner and thus while setting aside the impugned order dated 02.09.2015 and allowing the amended plaint to be taken on record, the plaintiff/petitioner is burdened with costs of Rs.5,000/-. This Court is again of the considered

view that the amendment would not change the nature of the suit; it is only an alternate relief which the plaintiff is now claiming. Learned counsel for the petitioner submits that no further evidence is required as the evidence already stands on the issues as they have been already framed. No further orders are called for on this petition.

Petition disposed of.

Order dasti under the signature of the Court Master.

Date of 27.04.2016 stands cancelled.

**INDERMEET KAUR, J**

**JANUARY 25, 2016**

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