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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA No.13/2016, CMs No.8378/2016 & 10740/2016 (both of the
appellant for amendment of the plaint)
RAJINDER SINGH Appellant
Through: Mr. Deepak Agarwal, Adv.

versus

SUBHASH SHARMA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.03.2016

1. The appeal impugns the dismissal *in limine* of a suit filed by the appellant for recovery of money consequent to rejection of the plaint for the reason of the claim therein as per averments in the plaint itself being barred by time.
2. The appeal came up before this Court first on 12th January, 2016 when after hearing the counsel for the appellant liberty was given to the appellant to amend the plaint.
3. The appellant filed CM No.8378/2016 for amendment of the plaint and which came up before this Court on 8th March, 2016 when it was felt that the amendments sought may not serve the purpose. On request of the counsel for the appellant, the appeal was adjourned to today.
4. The appellant has now filed CM No. 10740/2016 for amendment of the plaint along with amended plaint.
5. Vide order dated 12th January, 2016 opportunity to the appellant to amend the plaint was granted being of the view that the plaint had been rejected and consequently suit dismissed as time barred for lacuna in the

pleadings though the claim appeared to be within time and being of the view that for the inexperience of the Advocate engaged by the appellant the appellant as a litigant should not suffer. The same reason prevails today for allowing the amendment of the plaint at appellate stage.

6. Accordingly CM No.10740/2016 is allowed and CM No.8378/2016 is disposed of as infructuous.

7. Amended plaint is taken on record. Resultantly the impugned decree of dismissal of suit which was passed consequent to rejection of the plaint as per averments made in the plaint originally filed, cannot survive and has to be set aside.

8. Need to issue notice to the respondent before doing so is not felt since the dismissal of the suit also was without notice to the respondent.

9. Axiomatically the appeal is allowed. The order dated 3rd November, 2015 of the learned Additional District Judge (ADJ)-04 (North-West)/ Rohini Courts, Delhi of dismissal of CS No.293 of 2015 is set aside and the suit as per the amended plaint is remanded to the Trial Court for consideration afresh. The appellant/plaintiff to obtain certified copy of the amended plaint verified on 21st August, 2015 / 17th March, 2016 and to file the same before the Trial Court and to appear before the Trial Court with the certified copy of the amended plaint on 4th May, 2016 when the learned ADJ shall consider the amended plaint and take action in accordance with law therein.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 22, 2016/‘pp’..

RFA No.13/2016

page 2 of 2