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

+ CM(M) 69/2017 and CM Nos. 2289/2017 (stay) &
2290/2017(exemption)

ANITA GOEL & ANR Petitioners

Through Mr.S.C.Singhal, Advocate.

versus

M/S JIWAN INDUSTRIES (P) LTD & ORS..... Respondents

Through Mr. G.P.Thareja, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **20.01.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 11.11.2016 by which the respondents were permitted to give up their claim in respect of a portion of the suit property measuring 38.50 sq.yards as indicated in green colour in the site plan with liberty to file a fresh suit and the application filed by the respondents under Order 6 Rule 17 CPC was allowed.
2. The respondents have filed the suit for possession, cancellation, injunction and mesne profits. The defendants in the suit are sub tenants.
3. By the impugned order the trial court treated the application filed by the respondents under Order 2 Rule 2 CPC as one under Order 23 Rule 1 CPC and granted permission to the respondents to withdraw their claim in respect of the property measuring 38.5 sq. yards to institute separate proceedings in respect thereto in accordance with law, subject to law of limitation. Consequently, the court also allowed the application under Order 6 Rule 17 CPC.
4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioners has strongly submitted that the application under Order 6 Rule 17 CPC has been allowed by a non-speaking order. He submits that though he has no objection to the directions passed under Order 23 Rule 1 CPC and the consequential amendments sought, however para E of the proposed amendments seeks to introduce a claim for damages against the petitioners/other defendants for a sum of Rs.20 lacs without specifying as to from which of the sub-tenants how much amount is claimed and for which period and at what rate. He submits that the proposed amendment being absolutely vague, should not have been allowed by the trial court.

6. A perusal of the impugned order would show that the trial court noted the said submission of the petitioners that the proposed amendment is vague. I may also note that the suit amongst the reliefs sought also includes the relief regarding mesne profits.

7. Hence, merely by adding a claim for damages of Rs.20 lacs does not change the nature of the suit. The trial court has rightly rejected the submission of the petitioners that the proposed amendment is vague. This submission goes to the merits of the averments which are sought to be incorporated. It is settled legal position that at the time of dealing with an application for amendment of the plaint, merits of the averments which are sought to be added are not to be adjudicated upon. There is no infirmity in the impugned order.

8. With the above observations, the present petition and all pending applications are dismissed.

JAYANT NATH, J

JANUARY 20, 2017/rb