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

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Date of decision:06.03.2017

+ CM(M) 267/2017

VARINDER KATYALPetitioner
Through Mr.Vikas Aggarwal, Adv.

versus

SIMRET KATYAL & ORS.Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.8902/2017 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 267/2017 & CM No.8901/2017

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to challenge the order dated 25.05.2016 and 04.11.2016.
2. The background facts are that the respondent No.1/plaintiff has filed the present suit for permanent and mandatory injunction directing the defendant No.1/respondent No.2 Union Bank of India to substitute the name of the respondent No.1 in place of her late husband Shri Harinder Katyal with respect to operation of a locker. A decree of permanent injunction was also sought to restrain the bank from letting/permitting operation of the locker by the petitioner.

3. The suit was filed in 1995. Evidence of the plaintiff has been completed. On 19.5.2008 a Local Commissioner was appointed by the trial court to prepare an inventory of the articles lying in the locker. The inventory, however, it appears could not be prepared. On 18.10.2012 the respondent No.1 moved an application under Order 6 Rule 17 CPC whereby the petitioner sought to add the relief of a declaration to hand over/allow the respondent No.1 to take out the articles of jewellery as contained in the locker and also as declared by the respondent No.1 and her husband in their wealth tax returns as stri dhan. However, the trial court vide its order dated 18.10.2012 dismissed the said application on the ground that the application does not mention what are the articles of jewellery which are part of her stri dhan and are kept in the locker. The trial court also noted that the petitioner has filed the written statement in 1995 and the present application is filed in 2003. She has failed to show due diligence on her part and therefore the present application is dismissed.

4. Thereafter the respondent No.1 moved an application for review under Order 47 Rule 1 CPC of the said order dated 18.10.2012. On 14.12.2013 the present application was filed under section 151 CPC to permit the respondent No.1 to place on record a copy of list of articles lying in the locker.

5. On 16.10.2014 the trial court dismissed the review application for non prosecution. The petitioner thereafter filed an application under section 151 CPC for restoration of the said review application.

6. By the impugned order dated 25.05.2016 the trial court restored the review application, allowed the same and also allowed the application of respondent No.1 under Order 6 Rule 17 CPC and the application filed by the

respondent No.1 under section 151 CPC to place on record the list of articles lying in the locker.

7. The petitioner filed an application for review of the said order dated 25.5.2016 which application was dismissed.

8. I have heard learned counsel for the petitioner. He has vehemently argued that firstly on the date, namely, 25.5.2016 at best the application for restoration of the review was listed. The trial court heard the review application, allowed the same and also allowed the application under Order 6 Rule 17 CPC without giving an opportunity to the petitioner to make his submissions. He further submits that even if the application filed by the petitioner was to be allowed it was a fit case where doctrine of relation back should not be applied as the claim which is sought to be introduced by the respondent No.1, namely, for directions to permit it to take the contents of the locker is barred by limitation. He submits that he filed his written statement in 1995 and the amendment application has been moved in 2003. The claim of respondent No.1 to the contents of the locker was barred by limitation and could not have been allowed.

9. As far as the first contention of the petitioner, namely, that he was not heard on the application under Order 6 Rule 17 CPC is concerned he has filed the review petition where his submissions have been heard. The trial court rejected his contention holding that the applications were interconnected and arguments on the said applications were addressed together. Hence, the trial court concluded that there was no violation of principles of natural justice.

10. Coming to the argument that a time barred claim is sought to be introduced, in my opinion, the said contention is without any merits. The suit

as originally filed seeks a decree of mandatory injunction directing the bank to substitute the name of respondent No.1 in place of her husband with respect to operation of the locker and a decree of permanent injunction to restrain the bank from permitting the petitioner operation of the locker. Implicit in the said relief is that the respondent No.1 claims title to the contents of the locker. Hence, the amendment sought for, namely, to add the prayer whereby respondent No.1 is permitted to take out the articles of jewellery as contained in the locker as declared by her and her husband in the wealth tax returns is only a consequential relief incidental to the subject matter of the suit itself.

11. Without further going into the issue of as to whether the said prayer would be barred by limitation, reference may be had to the judgment of the Supreme Court in *Pankaja and another vs. Yellappa (dead) by LRs and Others (2004) 6 SCC 415* where in paragraph 14 it was held as under:-

“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 on the factual background of that case.”

12. Hence, there is no absolute rule that when a relief is time barred an amendment cannot be allowed. The court can exercise its discretion. In the

present case, the trial court has exercised its discretion and permitted the respondent No.1 to amend the plaint. In my opinion, in the facts and circumstances of the case exercise of the discretion was reasonable especially keeping in view the fact that the relief now sought to be added is incidental and connected with the reliefs already prayed for.

13. I may further note that the Supreme Court in ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors., (2009) 10 SCC 84*** held as follows:-

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:-

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is *bona fide* or *mala fide*;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

14. Hence, it is implicit that the amendment which is now being sought is imperative for proper and effective adjudication of the case. The fundamental nature of the suit is not changed. Hence, in my opinion, there are no reasons to interfere in the impugned order in exercise of supervisory powers of this court.

15. The present petition is without merits and is dismissed. All pending applications, if any, also stand dismissed accordingly.

(JAYANT NATH)
JUDGE

MARCH 06, 2017/n