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

+ CM(M) 161/2017

BALDEV RAJ SACHDEVA Petitioner
Through Mr.Vivek Luhra, Advocate
versus
RENU AGGARWAL & ANR Respondent
Through Mr.G.P.Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% 16.02.2017
CM No.5345/2017

Exemption allowed, subject to all just exceptions.

CM(M) 161/2017 & CM No.5344/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 24.11.2016 filed by the respondents/defendants whereby their application under Order 6 Rule 17 CPC seeking to amend their application for leave to defend was allowed. The petitioner has filed a suit under Order 37 CPC for recovery of Rs.2,36,000/-. The suit was filed in 2009. The respondents filed an application under Order 37 Rule 3(5) CPC seeking leave to defend in October 2010.

2. The application seeking condonation of delay was allowed on 4.3.2016. Now the respondents have filed the present application under Order 6 Rule 17 CPC whereby they seek to add additional pleas in their application for leave to defend, namely, (a) that the plaintiff/petitioner is

engaged in the business of money lending without holding a valid license in terms of The Punjab Registration of Money Lender's Act, 1938 (b) the plaintiff/petitioner has filed the suit to claim only interest amount as well as exorbitant rate of interest (c) the plaintiff/petitioner is not aware as to how much money he has lent to the respondents. He has filed another suit claiming a sum of Rs.14,70,000/-. The respondents also seek to add about some affidavit allegedly filed by the petitioner wherein he has stated that he has lent Rs.30 lacs to the respondents.

3. The trial court noting that the averments pertaining to the subsequent suit having been filed by the petitioner are events which have arisen after filing of the present suit, allowed the application for amendment.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has submitted that the trial court while disposing off the application has commented on the merits of the case of the petitioner which he submits was improper. He further submits that the respondents have sought to file the application after much delay inasmuch as the application for leave to defend has been filed in 2010 and now is sought to be amended in 2016.

5. As far as the finding of the trial court is concerned regarding the subsequent filing of suit by the petitioner, this cannot be controverted. The admitted fact is that the subsequent suit has been filed by the petitioner in 2012. Hence, bringing the fact of filing of the said suit on record and also raising pleas regarding the plaint filed in the suit would certainly be a subsequent event which the respondents would be entitled to bring on record.

6. Regarding the other plea sought to be raised by the petitioner about

the petitioner being covered under The Punjab Registration of Money Lender's Act, 1938, this is a purely legal plea and can be raised by the respondents, at any stage.

7. The last plea which is sought to be raised is regarding the claim of interest which in my opinion, has been rightly allowed inasmuch as it is only a corollary to the main defence of the petitioner.

8. However, there is merit in the contention of learned counsel for the petitioner that observations have been made by the trial court on the merits of the plea sought to be raised by the respondents in their application for leave to defend. While adjudicating an application for amendment under Order 6 Rule 17 CPC the merits of the claim which are sought to be introduced as amendment are not to be gone into. Accordingly, the observations made herein in the impugned order would not in any manner prejudice the parties at the subsequent stage of proceedings.

9. With the above observations, the present petition stands disposed of.

10. The application for leave to defend has been pending since long. The trial court is requested to expeditiously dispose of the application, preferably within four months from the date this order comes to its notice.

JAYANT NATH, J

FEBRUARY 16, 2017

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