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

% *Date of decision: 27.02.2017*

+ CM(M) 234/2017

BRAHAM KUMARI ISHWARIYA

VISHVA VIDYALAYA & ORS

..... Petitioner

Through Mr.J.P.Sengh, Sr. Advocate with
Mr.Ravinder Kumar Arora, Ms. Samia Malik and
Ms.Manisha Mehta, Advocates

versus

SUMAN LATA & ORS

..... Respondent

Through Mr.Amit Bhatia, Advocate for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.7714/2017 (*exemption*)

Allowed subject to all just exceptions.

CM(M)234/2017 & CM No.7713/2017(*stay*)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 15.11.2016 by which application filed by the petitioner/defendant under Order VI Rule 17 CPC to amend the written statement was dismissed.

2. The plaintiff/respondent has filed the present suit for possession, damages and permanent injunction for the suit property situated at Gali No.7, Shahi Mohalla, West Rohtash Nagar, Shahdara, Delhi-32. It is the claim of the respondent that the property was owned and occupied by the

late father of the respondents who constructed the same as a residence during his lifetime. It is contended in the plaint that the parents of the respondents were followers of petitioner No.1 and started a Yoga Centre on persuasion of petitioner No.1.

3. The plaint and written statement were filed in 2012. In May 2015 the present application had been filed by the petitioner for amendment of the written statement. Essentially, two aspects are sought to be added by means of the application for amendment, namely, that the suit premises has been endowed to a religious organisation and hence the endowment would require no registration and secondly that the property in question was a single storey building and with the consent of the parents of the respondents a three storied building has been constructed and hence in terms of The Indian Easement Act, 1882, the petitioners have certain rights in the property.

4. The trial court by the impugned order noted that the clarifactory facts as detailed in the application filed by the petitioner were within the knowledge of the petitioner when the written statement was filed. No reasons have been assigned by the petitioner in the application as to why these clarifactory facts were not incorporated in the written statement filed. Hence, the application was dismissed.

5. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioner submits that the courts are more liberal while dealing with applications for amendment of the written statement. He submits that the suit is at a preliminary stage and even issues have not yet been framed. He submits that courts have normally taken a liberal view in amendment of the written statement. Hence, the impugned order is erroneous.

6. Learned counsel appearing for the respondent submits that the intent of the present application for amendment is only to delay the proceedings. He submits that it is only a counterblast to an application filed by the respondent under Order 12 Rule 6 CPC. He further submits that all these pleas which are sought to be now incorporated were available with the petitioner when the written statement was filed.

7. The Supreme Court in ***Sushil Kumar Jain vs. Manoj Kumar & Anr., AIR 2009 SC 2544*** held as follows:-

“10. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action (See Baldev Singh and Ors. v. Manohar Singh and Anr. AIR2006SC2832).

11. Similar view has also been expressed in Usha Balashaheb Swami and Ors. v. Kiran Appaso Swami and Ors. AIR2007SC1663 . It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.”

8. Similarly, the Supreme Court in ***Sampath Kumar vs. Ayyakannu and Another, AIR 2002 SC 3369*** held as follows:-

“9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and

seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amendment. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

9. It is clear that there is no manifest delay in moving the application in the sense that the issues have not yet been framed. Further, the fact that the issues/contentions which are sought to be pleaded were available with the petitioner when they filed a written statement can also not be a ground to deny the relief of an amendment to the petitioners. In this context, reference may be had to the judgment of the Supreme Court in ***Ganesh Trading Co. vs. Moji Ram, (1978) 2 SCC 91*** where it was held that even incorrect pleadings can be rectified by moving an appropriate application for amendment. Relevant portion of the judgment read as follows:-

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by

appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

10. Keeping in view the above, it is manifest that the impugned order suffers from material illegality. The said order is quashed and the application for amendment filed by the petitioner is allowed subject to payment of costs of Rs.10,000/-. The petition and all pending applications stand disposed of.

11. At this stage, learned counsel for the respondent submits that the suit may be expeditiously disposed of. The trial court may take into account the long period spent in completion of pleadings and expeditiously dispose of the suit.

JAYANT NATH, J

FEBRUARY 27, 2017

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