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

% *Date of Decision:* 17.02.2017

\+ CM(M) 192/2017 and CM Nos. 6271-6273/2017

AJAY DHINGRA & ANR ..... Petitioners
Through Mr.Rishi Manchanda, Advocate.

versus

RAJ KUMAR RAJORA & ORS ..... Respondents
Through Mr.R.S.D. Dixit, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 20.09.2016 by which an application filed by the respondents/plaintiffs under Order 6 Rule 17 CPC has been allowed.

2. The respondents/plaintiffs have filed the suit for permanent injunction. As per the plaint, the respondents claim to be the joint owners of the property in Dev Nagar, Karol Bagh, New Delhi having purchased the same from the previous owner vide sale deed dated 28.10.2015 and 05.11.2015. It is averred that at the time of purchase of the property only constructive/symbolic possession of the property was given to the respondents. It is further contended that the suit property was let out to the father of the petitioners for residential purposes. Hence, a decree of permanent injunction was sought against the petitioners from creating any third party interest or parting with possession of the suit property.

3. Now the respondents have moved the present application under Order 6 Rule 17 CPC seeking to add the relief of possession and mesne profits in the plaint.

4. By the impugned order, the trial court relying upon the judgment of the Supreme Court in the case of ***Suraj Prakas vs. Raj Rani, AIR 1981 SC 485*** where it was held that liberal principles guide the exercise of discretion in allowing the amendment and that multiplicity of proceedings should be avoided, concluded that the fundamental nature of the suit does not change and allowed the application for the amendment.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner has vehemently argued essentially two grounds. He submits that the proposed amendment has changed the nature of the suit. He secondly submits that the plaint as now framed is liable to be rejected at the threshold as the respondents/landlords admit that the rent of the premises is Rs.98 per month and the petitioners are using the premises for commercial purpose. He submits that in view of Section 50 of the Delhi Rent Control Act, the present plaint is liable to be rejected after the amendment and hence, he submits that the amendments ought not to be allowed.

7. Learned counsel for the respondents has reiterated that the present amendments have been made only for the purpose to avoid multiplicity of proceedings. He further submits that the provisions of the Delhi Rent Control Act are not applicable in the present case as the original tenant was Sh.Jagdish Chander, the father of the petitioners. His tenancy, he submits, was terminated on 02.08.2005. The original tenant Sh. Jagdish Cahander has expired and the property is now being illegally occupied by the petitioners.

He relies upon Section 2(l) and explanation (ii) to Section 2(L) of the Delhi Rent Control Act which provides that if a person acquires by succession on the death of the tenant the right to continue in possession after the termination of tenancy and who was not financially dependent on the deceased tenant, the right of the successor to continue in possession is only limited for a period of one year. Hence, he submits that the provisions of the Delhi Rent Control Act would not be applicable.

8. A perusal of the plaint would show that the suit is based on title. The respondents have claimed to be the owners of the property and have sought to restrain the petitioners who are described as the sons of the erstwhile tenant from selling, alienating or transferring the suit property or parting with possession of the same. All the necessary averments regarding termination of the tenancy of Sh. Jagdish Chander, and the fact that the petitioners, as per the respondents, have only year to reside in the property under the provisions of Section 2 (l) of the DRC Act have also been averred in the plaint. The amendments which are sought are essentially in the relief clause, namely, addition of the prayer of eviction and mesne profits/damages. Hence, in the light of the above, it cannot be said that the nature of the suit has changed. It is a suit based on title and remains a suit based on title. Only addition is to the relief.

9. As far as the plea about the suit not being maintainable is concerned, keeping in view the averments of the parties, these are issues which are not to be adjudicated upon at the time of consideration of an application for amendment as the merits of the pleas sought to be raised by amendment are not to be gone into.

10. Reference may be had to the judgment of the Supreme Court in the

case of ***Lakha Ram Sharma v. Balar Marketing Pvt. Ltd., (2008) 17 SCC 671***, where the court held as follows:

> "4. It is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. That is a question which can only be decided at the trial of the Suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that Court is no ground for refusing that amendment. We, therefore, do not find any justifiable reason on which the High Court has refused this amendment. Accordingly, the impugned order is set aside and that of the trial court is restored. We, however, clarify that as the appellant has now raised the claim from Rs. 1 Lakh to Rs. 10 Lakh, the trial court will determine, whether or not Court Fees are correctly paid."

11. Settled legal position is that normally the court should be liberal while granting amendments. Reference may be had to the judgment of the Supreme Court in the case of ***B.K.Narayana Pillai v. Parameswaran Pillai & Anr., (2000) 1 SCC 712,*** where the court held as follows:

> "3. The-purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in, the administration of justice between the parties. Amendments are allowed in the pleadings to avoid

uncalled for multiplicity of litigation."

12. Accordingly, there is no merit in the present petition and the same is dismissed.

13. At this stage, learned counsel for the petitioners submits that the matter is coming before the trial court on 20.02.2017 and that he may be granted some time to file the written statement to the amended plaint Needful be done by the petitioner within two weeks from today with an advance copy to the respondent.

14. All pending applications also stand dismissed.

JAYANT NATH, J

FEBRUARY 17, 2017/rb