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

+ **CM(M) 356/2017**

PRAN NATH MEHTA & ORS Petitioner

Through **Mr.P.P.Ahuja, Advocate**

versus

EMAMI LIMITED Respondent

Through **Mr.Dipak Kumar Jena, Adv.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

29.03.2017

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Caveat No.289/2017

Since counsel for the caveator has entered appearance notice of caveat stands discharged.

CM No.12404/2017 (*exemption*)

Allowed subject to all just exceptions.

CM No.12406/2017 (*delay in re-filing*)

For the reasons stated in the application the delay in re-filing the present petition is condoned. Application is allowed.

CM(M) 356/2017 & CM No.12405/2017(*stay*)

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 8.12.2016 by which an application filed by the petitioner/defendant under Order 6 Rule 17 CPC for amendment of the written statement was dismissed.

2. The respondent company has filed a suit for specific performance of

the Agreement to Sell dated 11.3.1998. The admitted case is that evidence of the parties has been completed. It is, at this stage, that the petitioner/defendant has moved the present application for amendment of the written statement.

3. A perusal of the application filed by the petitioner would show that the counsel for the petitioner changed and suit was transferred from the High Court to the District Court on account of amendment regarding pecuniary jurisdiction. The new counsel is said to have inspected the record of the case and said to have come across certain details from the eviction petition filed by the petitioner against one M/s.CRI Ltd. Based on that, the petitioner seeks to add 26 new paragraphs to the written statement. Some of the averments sought to be added are that the respondent/plaintiff has never authorised Shri V.P.Khaitan by any resolution authorising him to enter into the Agreement to Sell in question. It also seeks to add that the said Shri V.P.Khaitan is not on the rolls of the plaintiff and is in fact working with the company CRI Limited i.e. the original tenant. It also seeks to add that the said Shri V.P.Khaitan has manipulated facts in order to fabricate the agreement to sell dated 11.03.1998 and drafts of Rs.2 lacs and Rs.5 lacs were deposited in the bank account of the deceased plaintiff in order to defeat the claim made by the deceased plaintiff in the eviction petition.

4. The trial court noted that in terms of the proviso to Order 6 Rule 17 CPC the present application would not be maintainable. The suit was filed in 1999. The eviction petition on which now reliance is placed by the petitioner and based on which the present application is sought to be filed was filed in 1997. The written statement was filed by the original owner Smt. Raj Rani Mehta in 2000. Thereafter the said Shri V.P.Khaitan against whom

allegations are sought to be incorporated by amendment had filed his evidence in 2008 and was cross-examined at length which cross-examination was concluded on 19.11.2010. Based on this, the application was dismissed holding that there is complete lack of diligence on the part of the petitioner.

5. I have heard learned counsel for the petitioner. The stated amendments, at this stage, seek to change the nature of the case inasmuch as various additional amendments are sought to be incorporated. The application, at this stage, if allowed would require *de novo* trial. There are no cogent reasons given as to why the facts which are now sought to be pleaded were not available with the petitioner at an earlier date. I see no reason to interfere in the impugned order. Present petition is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 29, 2017

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