

\$~A-1

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

%

Date of Decision: 03.03.2017

+ CM(M) 1216/2016

SUCHITA KAUR

..... Petitioner

Through Mr.Jagjit Singh, Mr.Preet Singh
Mr.Sukhdev Singh and Ms.Kiran Kaushik,
Advocates

versus

VIPIN KAPOOR

..... Respondent

Through Mr.R.C.Tiwari and Mr.Subhash
Chand, Advocates alongwith respondent in person

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No.44019/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM No.44020/2016 (delay)

For the reasons stated in the application the delay in refilling the petition is condoned. Application is allowed.

CM(M) 1216/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.5.2016 by which an

application filed by the respondent/defendant to amend the written statement was only partially allowed.

2. The respondent had filed a suit for permanent and mandatory injunction and damages. The parties had entered into a collaboration agreement whereby the petitioner had agreed to construct the building. In return, it is stated that the petitioner was entitled to a particular floor of the building. The stand of the respondent in the plaint is that the petitioner has deliberately and intentionally not constructed the building as per sanctioned plan. It is further stated that there are various deficiencies in the construction which are stated in the plaint. It is further stated that the respondent has wrongly handed over possession of the second floor to a prospective buyer. Based on these allegations the suit seeks a decree of damages of Rs.19,50,000/-, a decree of mandatory injunction to direct the petitioner to reconstruct the portions as per sanctioned plan and other connected reliefs are also sought.

3. The matter was still at the stage of pleadings when the petitioner moved the present application under Order 6 Rule 17 CPC for amendment of the written statement. In the written statement various paragraphs are sought to be added as paragraphs 23 A to 23 F. It is sought to be added that the second floor has been sold to Mrs.Neenu Arora and the respondent has now no right title or interest in the same. Other legal pleas are sought to be raised, namely, that the relief of mandatory injunction claimed is barred by law, the relief is a discretionary measure and cannot be granted, the respondent has himself committed breach of agreement by forcing the petitioner to construct portion of the building contrary to the sanctioned plan. Other certain factual details are also sought to be added.

4. The trial court by the impugned order has noted that almost similar objections have already been taken by the petitioner in the written statement. It also noted that the petitioner cannot withdraw the admissions. It also noted that legal pleas can be taken at any stage and hence concluded that paragraphs 23B, E and F are not necessary. It allowed para 23 A to be added to the written statement.

5. I have heard learned counsel for the parties. Learned counsel for the respondent repeated that the pleas which are sought to be raised by the petitioner are already incorporated in the written statement. He was unable to point out from the written statement of the petitioner as to which para incorporates the fact/averments which are sought to be added by means of amendment application.

6. The legal position regarding amendment of written statement is well known. Order 6 Rule 17 CPC reads as follows:-

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

7. To look at accepted principles of amendments, reference may be had to the judgment of the Supreme Court in the case of ***‘Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors.’, 2009 (13) SCALE 241.*** The Hon’ble Supreme Court in para 67 held as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerges 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.”

8. Keeping in view the legal position, in my opinion, the facts which are stated are only additional facts which do not change the nature of the defence sought to be raised by the petitioner. The facts are also of legal pleas which the petitioner seeks to add. The pleas are necessary for the purpose of determining the real question in issue. The impugned order suffers from material irregularity by disallowing the part of the amendment on the ground that the pleas already exist in the written statement of the petitioner or that there is a withdrawal of admission.

9. There appears to be no withdrawal of admission which has been pointed out.

10. Accordingly, the petition is allowed. The amendment in the written statement is allowed, subject to costs of Rs.7,500/-.

11. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 03, 2017

n