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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 526/2017 & CM No.17842/2017 (for stay)
PRAMOD KUMAR Petitioner

Through: Mr. Niloy Dasgupta, Adv.

Versus

GOBIND LAL ARORA & ANR Respondents

Through: Counsel for the respondent
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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05.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 2nd March, 2017 of the Additional District Judge (ADJ)-08, (Central), Tis Hazari Courts, Delhi of dismissal of an application filed by the petitioner / plaintiff for amendment of the plaint in a suit for recovery of possession of immovable property and for recovery of arrears of rent and *mesne profits* / damages.
2. The petition was entertained and notice thereof issued.
3. The counsel for the respondents appears.
4. The counsel for the petitioner is not available and passover is sought on his behalf.
5. However, the matter if passed over is unlikely to reach and having gone through the paper book, it appears that the impugned order is unsustainable. I have therefore heard the counsel for the respondents.

6. The amendment was sought prior to the commencement of trial. The learned ADJ by the impugned order has dismissed the application for amendment on the ground that the plaint after amendment in the manner as sought by the petitioner / plaintiff “will create anomaly regarding the identity of the suit property” and for the reason that the “amendment will create confusion regarding the identity of the suit property during the trial and at the time of disposal of the suit”.

7. I am afraid that amounts to the Court entering into the merits of the amendment and which is not permissible at the stage of considering the application for amendment as has been recently reiterated in ***Phonographic Performance Ltd. Vs. HT Media Ltd.*** 2017 SCC Online Del 7069 following ***Rajesh Kumar Aggarwal Vs. K.K. Modi*** AIR 2006 SC 1647.

8. If at all after amendment there would be any anomaly and confusion as has been held by the learned ADJ, the petitioner / plaintiff would suffer but the same could not have been a ground for denying the amendment qua which it has not been held that it has been sought at a belated stage or that the amendments sought are not necessary to adjudicate the real controversy in dispute between the parties. Rather, the amendment is to incorporate the subsequent events of the petitioner / plaintiff having recovered possession of part of the property qua which the suit was earlier filed and the respondents / defendants being in breach of their commitment to vacate the remaining portion of the property also.

9. This petition thus succeeds and is allowed. The order dated 2nd March, 2017 is set aside. Axiomatically, the application for amendment of the plaint is allowed. The proposed amended plaint if not filed along with

the application for amendment of the plaint be now filed on or before 15th July, 2017 to enable the respondent / defendant to file written statement thereto on or before the next date before the trial court informed to be 9th August, 2017.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 05, 2017
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