

\$~A-5

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

% ***Date of order:* 04.01.2017**

+ CM(M) 1220/2016 & CM Nos.44146-49/2016

L C SHARMA (SINCE DECEASED TH LR). Petitioner
Through Mr.R.D.Sharma, Mr.Rajat Sharma
and Mr.Chetan Sharma, Advs.

versus

JAI SINGH Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 24.8.2016 by which an application filed under Order 14 Rule 5 CPC was dismissed. By the said application the petitioner sought to add an additional objection regarding section 33 and 45 of the Delhi Land Reforms Act. The trial court by the impugned order noted that the suit has been filed in 1994 for specific performance of an agreement regarding land. Written statement was filed on 22.9.1995. No such objection was taken at an earlier stage.

2. This Court on 18.3.2016 in CM(M)1016/2014 in a challenge to the order dated 22.10.2014 of the trial court had granted one opportunity to the petitioner to cross-examine PW-1 and PW-2. Keeping in mind the order of this Court the trial court concluded that instead of examining the plaintiff's witnesses, the petitioner has moved this application for framing of an additional issue and hence it would not be proper to allow the same and

dismissed the application.

3. The issue that the petitioner seeks to have framed is “whether the suit is barred under the provisions of section 33 and 45 of the Delhi Land Reforms Act”. This is purely a legal issue. Learned counsel for the petitioner confirms that he does not have to lead any additional evidence on this issue as it is a pure question of law. It is a settled legal position that pure question of law can be raised at any stage of the proceedings.

4. Reference in this regard may be had to the judgment of the Supreme Court in *The National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad and ors. (2011) 12 SCC 695* wherein it was held as follows:-

14. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. (*See: M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India and Ors. AIR 2010 SC 1089; and Greater Mohali Area Development Authority and Ors. v. Manju Jain and Ors. AIR 2010 SC 3817*).

5. Despite service of advance copy none has appeared for the respondent. In the light of the above, it is appropriate that the petitioner be given an opportunity to approach the trial court by moving an application for review/recall of order dated 24.8.2016. In case such an application is filed the trial court may consider the same, as per law. In the meantime, learned counsel appearing for the petitioner undertakes that he will not take an adjournment on 10.1.2017 for cross-examination of the plaintiff's witnesses as directed by this court in its order dated 18.3.2016.

6. Petition stands disposed off.
7. Dasti.

JAYANT NATH, J

JANUARY 04, 2017

n