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

+ CM(M) 1301/2016

MINATI

..... Petitioner

Through: Mr.Arjun Mitra & Ms.Ritika Mitra,
Advocates.

versus

PANKAJ DEY

..... Respondent

Through: Mr.Dibyadhuti Banerjee &
Ms.Paeoma Sen Gupta, Advocates

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.05.2017

CM No.46766/2016

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 1301/2016

1. The petitioner has invoked the jurisdiction of this Court under Section 227 of the Constitution of India feeling aggrieved by the order dated 28th September, 2016 whereby her prayer for amendment of the plaint has been declined by learned Trial Court.
2. Learned counsel for the petitioner/plaintiff submits that the trial in the case has not commenced so far. Due to the wrong drafting and failure of the previous counsel to incorporate all the facts in the plaint it has become necessary to amend the plaint which does not have the effect of changing the nature of the suit and no prejudice will be caused to the respondent/defendant if the amendment is allowed.
3. The prayer for amendment has been declined by the learned Trial Court for the following reasons:

- (i) In the plaint the sale consideration was referred to as Rs.15 lac which is now sought to be changed to Rs.55 lac which is altogether a new plea.
- (ii) **By way of proposed amendment the plaintiff wants to insert para 15 to 37** giving the details of the various payments made on different occasions, which is again in sharp contradiction to the plea taken in the existing plaint that she has paid only Rs.16 lacs towards sale consideration of the property in question thereby making a substantial change in the stand already taken.
- (iii) The agreement to sell in respect of the property agreed to be purchased for Rs.55 lacs was not even pleaded in the plaint.
- (iv) By way of amendment not only the cause of action is being changed but new cause of action is sought to be incorporated.
- (v) By way of proposed amendment drastic change is being made in the entire plaint. The proposed amendment if allowed it would change the nature of the suit.
- (vi) The facts sought to be pleaded by way of amendment are not such which were not within the knowledge of the plaintiff at the time of filing the suit.

4. While dismissing the application under Order VI Rule 17 CPC, learned Trial Court has further noted the factum of earlier filing an application seeking amendment as under:

“15. Perusal of the record would also reveal that previously also the plaintiff moved the application seeking amendment in the plaint. The said application was dismissed as withdrawn as there was still some mistake in the amendment application. Thereafter, another application u/o 6 rule 17 CPC was moved which was allowed vide order dated 03.11.2015. As such, the plaintiff earlier has moved two applications seeking amendment in the plaint and these applications and the proposed amended

plaint annexed with them were duly signed by the plaintiff, which were accompanied with the affidavit of the plaintiff. Therefore, it is highly unbelievable that she was not aware of the contents of the plaint and she was kept in dark by the previous counsel, more so when she is a retired bank employee.

16. In the facts and circumstances of the case, since the proposed amendments as sought by the plaintiff by way of present application would change the nature of the suit, same cannot be allowed. Accordingly, the application moved by the plaintiff u/o 6 rule 17 CPC seeking amendment in the plaint is hereby dismissed.”

5. The facts which are now sought to be inserted by way of amendment are the facts which were existing at the time of institution of the suit. The contents of the plaint are not only verified, but accompanied by the supporting affidavit. Although the petitioner has tried to put blame on the previous counsel on his inability to put the complete facts correctly or that he lacked the drafting skills, the fact is that after the institution of the suit twice the application under Order VI Rule 17 CPC have been filed which shows that this provision has been grossly misused by the petitioner to take not only contradictory pleas but also to change the nature of the suit.

6. Learned Trial Court has noted down in detail the proposed amendments and the reasons for which the same cannot be allowed.

7. Since the order passed by learned Trial Court does not suffer from any illegality or perversity, it does not require any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

8. The petition is dismissed.

PRATIBHA RANI, J.

MAY 11, 2017

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