

\$~4

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

+ **CM(M) 903/2017**

VEENA KAPOOR

..... Petitioner

Through: Mr. Surpreet Singh Sethi, Adv.

Versus

NARESH KUMAR & ORS

..... Respondents

Through: Mr. Subhash Kamboj, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

07.11.2017

1. This order is in continuation of the earlier order dated 23rd August, 2017.
2. The petitioner / plaintiff did not take steps for service of the notice ordered to be issued.
3. However the counsel for the respondents / defendants appears and complains that even the paper book was supplied only two days back. It is further contended that the suit, from which this petition arises, was listed for final arguments on 7th September, 2017 when the counsel for the petitioner / plaintiff took adjournment owing to the filing of this petition.
4. The counsel for the respondents / defendants states that even though the counsel for the petitioner / plaintiff has stated that the petitioner / plaintiff will not lead any evidence pursuant to the amendment sought, save for placing the acquisition notification on record, but merely placing the acquisition notification on record will not amount to proof by the petitioner / plaintiff of the plea sought to be taken by way of amendment and the respondents / defendants would be required to lead

evidence in rebuttal and which would literally re-open the evidence in the entire suit from which this petition arises and which is pending since the year 2005.

5. The counsel for the respondents / defendants has further argued that it is not as if the plea sought to be taken by way of amendment was not known to the petitioner / plaintiff earlier. It is stated that besides the suit from which this petition arises, the respondents / defendants had filed another suit against the petitioner / plaintiff herein for specific performance of an agreement of sale of another piece of adjoining land / property and which suit being CS No.39/2016 (New No.11465/2016) of the Court of Additional District Judge-03 (ADJ), District West, Tis Hazari Courts, Delhi was decreed on 20th December, 2016 and whereagainst an appeal is pending in this Court. The counsel for the respondents / defendants has during the course of hearing handed over in the Court a copy of the said judgment and has drawn attention to para 46 thereof where the contention of the counsel for the petitioner / plaintiff who was the defendant therein, to the same effect on the same plea which is now sought to be taken by way of amendment in the present suit, is recorded and which has been negated.

6. The counsel for the respondents / defendants contends that the amendment sought by the petitioner / plaintiff is thus in the teeth of the proviso to the Order VI Rule 17 of the CPC.

7. The counsel for the petitioner / plaintiff has argued that in the judgment, copy of which has been handed over, the plea of the petitioner / plaintiff (which is sought to be taken by way of amendment of the plaint in

the suit from which this petition arises) has been wrongly rejected and it is the contention of the counsel for the petitioner / plaintiff in the appeal preferred against the said judgment.

8. However, the question is not whether the plea has been rightly rejected or not in the other suit aforesaid. What is clearly borne out from the aforesaid is that the petitioner / plaintiff was very well aware of the plea sought to be taken by way of amendment. The Legislature has, with effect from amendment to the CPC of the year 2002, inserted a proviso to Order VI Rule 17 thereof and which prohibits application for amendment to be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party seeking amendment could not have raised the matter before commencement of trial. Reference if any required can be made to ***Ajendraprasadji N. Pande Vs. Swami Keshavprakeshdasji N.*** (2006) 12 SCC 1. In the present case, the conduct aforesaid of the petitioner / plaintiff clearly spells out that the petitioner / plaintiff, inspite of having taken the said plea in another proceedings, did not take it in the plaint in the suit from which this petition arises. It thus cannot be said that the condition stipulated in the proviso aforesaid is satisfied.

9. The counsel for the petitioner / plaintiff has referred to ***L.C. Hanumanthappa Vs. H.B. Shivakumar*** 2016 (1) RLR 357 and ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons*** (2009) 10 SCC 84 but both of which are not found to contain any discussion on the newly inserted proviso aforesaid to Order VI Rule 17 of the CPC. Both the said judgments relate to suits instituted prior to the insertion of the proviso to Order VI Rule 17 of the CPC and to which suits, the said proviso does not apply.

10. Moreover, it cannot be lost sight of that the suit, from which this petition arises, is now 12 years old and is on the anvil of adjudication. Allowing the application for amendment at this stage would undoubtedly lead to re-opening of the trial and to prevent which the proviso aforesaid was inserted in Rule 17 of Order VI of the CPC.

18. There is thus no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 07, 2017

‘gsr’..