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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1137/2017**
DCM APARTMENTS OWNERS ASSOCIATION..... Petitioner
Through: Mr. Harkirat Sawhney, Adv.

Versus

RK TOWERS INDIA PVT LTD & ORS Respondents
Through: Mr. Dhruv Rohatgi, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.10.2017**

Caveat No.890/2017

1. The counsel for the caveator / respondent no.5 / defendant no.5 has appeared.
2. The caveat stands discharged.

CM No.37007/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

CM(M) 1137/2017

5. This petition under Article 227 of the Constitution of India impugns the order dated 24th August, 2017 [in CS No.56354/2016 of the Court of Civil Judge-I, New Delhi District, New Delhi] of dismissal of the application of petitioner / plaintiff for amendment of the plaint, sought consequent to impleadment of defendant no.5 DCM Building Office Flat Owners Welfare Association / caveator as defendant in the suit.
6. The counsel for the petitioner / plaintiff on enquiry states that the defendants no.1 to 4 in the suit viz. M/s R.K. Towers India Pvt. Ltd.,

Managing Director, M/s R.K. Towers India Pvt. Ltd., Estate Manager, M/s R.K. Towers India Pvt. Ltd. & General Manager, M/s R.K. Towers India Pvt. Ltd. have already been proceeded against *ex parte* in the suit and that only the defendant no.5 / respondent no.5 / caveator had opposed the application for amendment.

7. For this reason, the need to issue notice of this petition to the respondents / defendants no.1 to 4 is not felt.

8. The dispute in the suit is *inter alia* with respect to the right to carry out maintenance services and management of common areas in a multi-storied building, being DCM Building, 16, Barakhamba Road, New Delhi. The petitioner / plaintiff claims to be entitled thereto and instituted the suit from which this petition arises, impleading the builder and the officials of the builder of the said multi-storied building as defendants thereto. The respondent no.5 / caveator DCM Building Office Flat Owners Welfare Association which claims to be vested with the right to carry on aforesaid maintenance was subsequently impleaded as aforesaid.

9. The amendment sought, was to make pleas against and to claim relief against the defendant no.5 / respondent no.5 / caveator.

10. I have enquired the stage of the suit.

11. It is stated that the suit is at pre-issue stage.

12. I have next enquired from the counsel for the defendant no.5 / respondent no.5 / caveator whether he is willing to make a statement that the petitioner / plaintiff, if ultimately found entitled to the relief already claimed in the suit, the respondent no.5 / caveator will not take the plea of the

petitioner / plaintiff being not entitled to the said reliefs owing to having not made specific averments against the defendant no.5 / respondent no.5 / caveator and not claiming specific relief against the defendant no.5 / respondent no.5 / caveator.

13. The counsel for the defendant no.5 / respondent no.5 / caveator states that he is not willing to make such a statement.

14. In the aforesaid view of the matter, the order of dismissal of the application for amendment of the plaint is found to be not in accordance with law and is set aside.

15. I am constrained to observe that inspite of the impugned order running into six pages, a perusal thereof shows the same to be bereft of any reasoning and the learned Civil Judge has merely reproduced either provisions of law or the reliefs claimed in the plaint as existing and the amendments sought. A copy of this order be forwarded to the learned Civil Judge who has authored the impugned order so as to make amends in future.

16. The petition thus succeeds. The order dated 24th August, 2017 impugned in this petition is set aside. Axiomatically, the application for amendment is allowed. The amended plaint is stated to have been already filed.

17. The suit is stated to be listed next on 13th November, 2017.

18. The defendant to file written statement to the amended plaint on 13th November, 2017 and the Trial Court to thereafter proceed with the suit.

No costs.

19. At this stage, the counsel for the petitioner has mentioned the matter in the absence of the counsel for the defendant no.5 / respondent no.5 / caveator and states that he does not know whether the amended plaint has been filed or not.

20. If the same has not been filed, it be filed before tomorrow i.e. 17th October, 2017 with copy to the counsel for the defendant.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2017
'gsr'..