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

+ **CM(M) 1068/2017**

LACHMANDAS NARAIN DAS JIWNANI Petitioner

Through: Mr. P. Banerjee & Ms. S. Singhal,
Advs.

Versus

ROMESH SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.09.2017**

CM No.34943/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order [dated 26th July, 2017 in CS No.2682/2016 of the Court of Additional District Judge (ADJ)-05, South District, Saket Courts, New Delhi] of dismissal of the application filed by the petitioner / plaintiff for amendment of the plaint.

4. The counsel for the petitioner / plaintiff has been heard.

5. The petitioner / plaintiff, in or about the year 1998 instituted the suit from which this petition arises for recovery of possession of immovable property, cancellation of agreement, recovery of *mesne* profits and for ancillary injunctions pleading i) that the petitioner / plaintiff had taken a sum of Rs.6 lacs from one Ms. Mandakini Hule; ii) that the said Ms. Mandakini Hule forcibly and illegally entered into the property of the petitioner /

plaintiff; iii) that on intervention of friends, a settlement was arrived at whereunder the petitioner / plaintiff agreed to pay a sum of Rs.11 lacs to the said Ms. Mandakini Hule and the said Ms. Mandakini Hule agreed to hand over possession of the premises on receipt of the said amount; iv) that though the petitioner / plaintiff was ready to so pay the aforesaid amount, Ms. Mandakini Hule avoided; v) that the said Ms. Mandakini Hule inducted the defendant Romesh Sharma into the property; vi) that the defendant claims ownership of the property by virtue of a Sale Deed dated 12th March, 1985 of the property in his favour; vii) that the sale deed, and the power of attorney on the basis of which the said Sale Deed has been executed, have been forged and fabricated and are liable to be cancelled; viii) hence, the suit for recovery of possession.

6. The suit was valued for the purpose of court fees and jurisdiction at Rs.50 lacs for the relief of recovery of possession and at Rs.200/- each for the reliefs of declaration and injunction and at the rate of Rs.500/- for cancellation of sale deed.

7. The suit, on enhancement of the minimum pecuniary jurisdiction of this Court, was transferred to the Subordinate Court before which the petitioner / plaintiff, at the stage of its evidence, filed an application for amendment of the plaint contending that the rental value on a monthly basis of the suit property is about Rs.5 lacs per month and thus for three years i.e. for 36 months prior to the institution of the suit i.e. for the period of 1995 to 1998, a sum of Rs.1,80,00,000/- was due towards *mesne* profits and wants to amend the valuation paragraph of the plaint to add to the existing valuation the valuation of Rs.1,80,00,000/- for the relief of recovery of arrears of *mesne* profits.

8. I may mention that in the plaint as originally filed (copy of which has not even been filed before this Court but the tenor whereof is evident from the copy of the amended plaint filed along with the paper book without disclosing that it is the amended plaint) the claim for *mesne* profits in the prayer paragraph is from July, 1987. However there is no valuation for the relief of *mesne* profits and thus the prayer for *mesne* profit with effect from July, 1987 is of no avail and the entitlement of the petitioner / plaintiff was only to the future *mesne* profits from the date of institution of the suit i.e. from the date of institution of the suit in the year 1998 on arrears claimed of *mesne* profits till the date of institution of the suit court fee has to be paid.

9. Since the counsel for the petitioner / plaintiff does not even have the copy of the original plaint with him and only after much investigation he was able to state that the copy of the plaint filed is of the amended plaint, it is inexplicable as to how now, after nearly 19 years, *mesne* profits for a period of three years prior to the institution of the suit are sought to be claimed by way of amendment. The claim sought to be added by way of amendment of the plaint was barred by time on the date of applying for amendment.

10. Even otherwise, it is quite evident that the petitioner / plaintiff has been negligent in pursuing the suit inasmuch as in the suit of the year 1998, the recording of petitioner / plaintiff's evidence is still underway.

11. I have informed the counsel for the petitioner / plaintiff that the disposal of the suit before the District Courts to whom the National Court Management Systems Committee of the Supreme Court has requested to

dispose of the suits which are more than 10 years old at least by 31st December, 2017, would be much quicker and if the suit were to be transferred back to this Court as appears to be the intent of the petitioner / plaintiff, it will not be decided by then.

12. The counsel for the petitioner / plaintiff states that the petitioner / plaintiff wants to bring the suit to this Court and is not bothered about the delay in the disposal of the suit and is willing to pay the court fees.

13. The petitioner / plaintiff cannot be permitted to so purchase the forum.

14. Though the Full Bench of this Court in *Subhashini Malik Vs. S.K. Gandhi* (2016) 233 DLT 83 has held that a plaintiff is entitled to amend the valuation for the reliefs value whereof is in the discretion of the plaintiff including if wants to keep the suit in this Court but the petitioner / plaintiff is not wanting to amend the valuation of any such relief but is wanting to enhance valuation by adding valuation of a relief which has not even been claimed in the original suit.

15. The application for amendment is clearly advocate driven and not litigant driven.

16. I find it in the interest of the petitioner / plaintiff that the suit continues in the District Court before whom it is pending, so that the petitioner can have early adjudication of his lis.

17. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 22, 2017/‘gsr’..

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