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

+ CM(M) 1149/2017, CM No.37256/2017 (for stay)

ARUN SHARMA & ANR

..... Petitioners

Through: Ms. Sonia A. Menon, Mr. Himanshu
Saini, Advocate

versus

ANIL TYAGI

..... Respondent

Through: Mr. Dhruv Madan, Mr. Mukul Rawal,
Mr. Biswajit Sabharwal, Mr. Anirudh
Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.11.2017

1. This order is in continuation of the earlier order dated 16th October, 2017.
2. The counsel for the petitioners/defendants, in response to the query made from her and as recorded in the order of that date, has drawn attention to Section 2(8) and 2(9) of the Prohibition of Benami Property Transaction Act, 1988 and has contended that the holding of the property in the name of the mother of the parties falls in exception (1) and/or (2) to Section 2(9)(A)(b) of the said Act. It is contended that since the father of the parties had paid for and was entitled to the property, execution of Sale Deed thereof, post the demise of the father, in the name of the mother of the parties for the reason of being the eldest, would amount to the mother of the parties holding the property for the benefit of other members of the family and/or the Sale Deed being executed in her name in a fiduciary capacity. It is

further argued that by way of amendment with effect from 2016 of the Act, what was earlier contained in Section 4 of the Benami Transactions (Prohibition) Act, 1988 is now to be found in the aforesaid provision.

3. The counsel for the respondent/plaintiff had contended on the last date that the petitioners/defendants, in the application for amendment, sought the amendment by claiming it to be clarificatory and the amendment was allowed again for the reason of it being clarificatory and thus the amendment of the written statement does not invite framing of additional issues.

4. I have considered the respective arguments.

5. The purpose of framing issues is to guide the trial of the court. Once the amendment of the written statement has been allowed, whether it be clarificatory or substantial, the defendants cannot be restrained from leading evidence on the pleas taken by way of amendment. It is felt that in the absence of a specific issue in this respect, the attention of the petitioners counsels may not be drawn to the matter in controversy, thereby prejudicing the trial.

6. For this reason, the petition is allowed. The impugned order dated 26th July, 2017 is set aside.

7. The following additional issues are framed in the Suit from which this petition arises:

Additional Issue No.1

Whether the suit property was purchased from the sale proceeds of the Rajouri Garden property and, if so, to what effect? (OPD)

Additional Issue No.2

Whether the defendants inherited any rights in the Rajouri Garden property from their father? (OPD)

Additional Issue No.3

Whether the mother of the parties was holding the Rajouri Garden property for the benefit of and on behalf of all the LRs of her husband and, if so, to what effect? (OPD)

8. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2017
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