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

+ **FAO(OS) 129/2018 & CM. Nos. 34335/2018, 34336/2018,
34337/2018 and 34338/2018**

SURESH KUMAR MALHOTRA & ORS Appellants
Through: Appellant no.1 in person.

versus

GUJRAL ESTATES PVT LTD Respondent
Through:

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

% **ORDER**
27.08.2018

CM No. 34336/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**CM No. 34338/2018 (filed by appellant seeking condonation of 78 days
delay in filing the appeal)**

For the reasons stated in the application, the delay of 78 days in filing
the appeal is condoned. Application stands disposed of.

**CM No. 34337/2018 (filed by appellant seeking condonation of 60 days
delay in re-filing the appeal)**

For the reasons stated in the application, the delay of 60 days in re-
filing the appeal is condoned. Application stands disposed of.

FAO(OS) 129/2018

1. The present appeal has been filed by the appellants challenging the order dated January 10, 2018 passed by the learned Single Judge in IA No. 12396/2017, which was an application under Order VI Rule 17 CPC, whereby the appellants were seeking amendment in the plaint for enhancement of damages to Rs.7,17,72,000/-.

2. The learned Single Judge has by relying upon Section 10 and section 21(4) of the Specific Relief Act and also on the judgment of the Supreme Court in the case of *Fateh Chand v. Bal Krishan AIR 1963 SC 1405* and *Kailash Nath Associates v. Delhi Development Authority and another (2015) 4 SCC 136* has held that it is the principle contained in Section 73 of the Contract Act, which applies for determination of damages as on the date of the breach. According to him, the damages are the differential higher value of the property on the date of breach and not being the value of the property on the date of passing of the judgment in the suit. Another ground which weighed with the learned Single Judge was that the suit was filed in the year 1986 will have to be sent for trial with fresh evidence of both the parties to be lead on the value of the property alleged. Further, if the application of this nature is allowed, then till the entire period in which the suit remains in the category of '*finals*' there could be repeated applications on different point of time seeking to enhance the value of the damages on account of alleged increase in the value of the property. The learned Single Judge dismissed the application.

3. It is the contention of the appellant No.1, who appeared in person that the view taken by the learned Single Judge is at variance with the view

already taken by a Coordinate Bench in an earlier application filed by the appellant herein being IA No. 1846/2007 decided on January 06, 2009 whereby the Coordinate Bench had allowed a similar application under Order VI Rule 17 CPC.

4. The plea now raised by the appellant No.1 was also raised before the learned Single Judge during the course of hearing, which resulted in the impugned order, as is clear from para 4 of the impugned order. The said submission has been dealt with by the learned Single Judge in para 5(i), which is reproduced as under:-

“5(i) The only relevant provision in this regard will be Section 21 of the Specific Relief Act and this provision has been reproduced in the order dated 6.1.2009. The order dated 6.1.2009 however in spite of reproducing the provision of Section 21 of the Specific Relief Act does not deal with the Sub-Section (4) of Section 21 of the Specific Relief Act, and which provision specifically states that for awarding compensation, the provision of Section 73 of the Indian Contract Act will govern.

XXXXX

XXXXX

XXXXX”

5. Further ground which weighed with the learned Single Judge to dismiss the application is the fact that the suit was filed in the year 1986. In other words, even after 22 years, the said suit is still pending adjudication. No doubt, it is a settled position of law that in terms of the judgments of the Supreme Court that an amendment can be sought any time during the pendency of the suit but the apprehension of the learned Single Judge that till such time, the matter is pending in the ‘*finals*’, such applications would

continue to be filed is well founded.

6. Keeping in view the peculiar facts of this case, we are not inclined to interfere with the impugned order of the learned Single Judge. The appeal is dismissed. No costs.

CM. No. 34335/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 27, 2018/Ak