

\$~6

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 19th February, 2018

+ CM(M) 845/2016 and CM APPL.31545/2016

MADAN LAL WADHWA

..... Petitioner

Through: Mr. Puneet Wadhwa, attorney of the
petitioner along with Petitioner in
person.

versus

GURPREET KAUR

..... Respondent

Through: Mr. Chand Zafar, Advocate with
Ms. Mahima Dayani, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the defendant in the civil suit (CS No.35/2015) pending on the file of the Civil Judge, South-East District at Saket Court Complex, New Delhi. The suit of the respondent (the plaintiff of the suit) seeks relief against the petitioner (the defendant) in respect of “*common lavatory block*” attached to the locality known as Double Storey Quarters, Jungpura Extension, New Delhi-110014, he (the plaintiff) claiming to be the owner/allottee of quarter/tenement No.3/47, the defendant claiming to be the owner/allottee of the quarter/tenement No.3/45. The plaint was filed to seek permanent injunction *qua* the defendant to restrain him against interference in the peaceful enjoyment of the said common lavatory block or from throwing garbage/junk food near the quarter/tenement of the plaintiff

or the said lavatory block or causing damage to the property of the plaintiff or against making graffiti on its walls and further against interference in the repairs of the said walls.

2. It is stated that the defendant has also filed a counter claim seeking certain reliefs against the plaintiff. In the said counter claim, concededly the Land & Development Officer (L&DO) of the Government of India, which is stated to have made the allotment of the said quarter/tenement and the South Municipal Corporation of Delhi (SDMC) have been made a party. The grievance of the petitioner (the defendant) is that the respondent (plaintiff of the suit) of case has not made the said agencies – L&DO and SDMC as parties to the main suit. His further grievance is that the issue also concerns the owner/allottee of the quarter/tenement at the ground floor (i.e. No.3/44). According to the petitioner/defendant, in absence of the said parties – L&DO, SDMC and allottee of quarter/tenement No.3/44 – there is a defect of *non-joinder* in the main suit.

3. The petitioner/defendant had moved two applications both under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), one to amend the written statement-cum-counter claim and the other for amendment of the plaint. By his application under Order VI Rule 17 CPC which was considered with another application under Order 1 Rule 10 (2) CPC, for amendment of the written statement-cum-counter claim, he was allowed to bring on board L&DO and South Delhi Municipal Corporation (SDMC) as parties to the proceedings arising out of the counter claim but similar prayer *qua* the plaint was not

accepted.

4. The submission of the petitioner that the above mentioned two orders of the civil Judge are contradictory cannot be accepted. It has to be borne in mind that the counter-claim stands as proceedings independent of the civil suit though both require to be proceeded with simultaneously. The defendant of the suit may have some relief to claim in the above context against L&DO and the local municipal authority. But, for such purposes it is not incumbent on the plaintiff of the case to also implead such agencies or another neighbour as additional defendants. It is his prerogative to proceed against the parties he chooses to litigate with. The cause of action pleaded in the suit being essentially against the defendant, there is absolutely no need for L&DO or SDMC or for that matter the third allottee to be impleaded as additional defendants in the main suit.

5. The petition is wholly misconceived and is consequently dismissed. The application filed therewith also stands disposed of.

नित्यमेव जयते

R.K.GAUBA, J.

FEBRUARY 19, 2018

vk