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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1143/2018**

RAJINDER KUMAR BIDANEY Petitioner
Through: **Mr.Sunil Lalwani, Advocate**

versus

SHARDA DEVI Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **24.09.2018**
CM No. 38801/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

CM(M) 1143/2018 and CM No. 38800/2018

By the present petition, the petitioner assails the impugned order dated 12.7.2018 of the learned Additional District Judge-13 (Central) in CS No.11770/2016 vide which an application under Order 6 Rule 17 of the CPC filed by the plaintiff arrayed as respondent to the present petition, vide which he sought to incorporate a prayer clause seeking declaration to the effect that the collaboration agreement dated 25.8.2008 between the parties stood terminated being null and void, was allowed.

It has been submitted on behalf of the plaintiff to the suit that the application has been filed with much delay after a lapse of eight years and that there had been an oversight in not seeking the relief as claimed in the prayer clause.

Through the submissions that have been made on behalf of the petitioner herein, it has been submitted that the relief would be time barred as was also sought to be contended before the learned Trial Court.

A perusal of the copy of the plaint on record as filed by the plaintiff, i.e., the respondent to the present petition, indicates that vide paragraph 28 thereof it was averred to the effect:

28. That the cause of action to institute the instant suit arose on 7.06.2010 when the above-named defendant failed to perform his part of the agreement and was supposed to complete the construction of the property and hand over the same to the plaintiff. The cause of action again arose on 3.06.2010 when the plaintiff send a legal notice for termination of the collaboration agreement. It again arose on 08.06.2010 when the legal notice in which it was clearly mentioned that the present legal notice hereby terminates the collaboration agreement dated 25.08.2008 and directs the defendant to stop any type of construction activity at the said property. The cause of action to institute the instant suit thus still subsists and is continuing.” ,

indicating therein that the plaintiff of the said suit had specifically averred to the effect that she had terminated the collaboration

agreement dated 25.8.2008 and had sought that the defendant, i.e., the present petitioner, be stopped from raising any kind of construction activity at the said spot. The application under Order 6 Rule 17 CPC filed by the plaintiff of the said suit i.e. the respondent herein through the amended paragraph seeks the insertion of the paragraph to the effect:

“AMENDED PARA:-

*That the value of the suit for the purpose of permanent injunction has been valued at Rs.200/- (Two Hundred Rupees only) and an appropriate court fee has been affixed **suit for declaration thereby declaring the collaboration agreement dated 26.08.2008 as terminated /being null and void, it is valued at Rs. 200/- on Which fixed court fee of Rs. 20/- is affixed.***

8. That the plaintiff also wants to insert new prayer Para after prayer clause B which will make it prayer C and subsequent Prayer C and D shall become prayer D and E respectively.”,

which indicated that the plaintiff, i.e., the respondent to the present petition sought the declaration of the very same collaboration agreement dated 28.5.2008 as having been terminated/null and void which was valued at Rs.200/- on which fixed court fee of Rs.20/- in relation thereto having been sought to be paid.

On behalf of the petitioner herein it is contended that the petitioner is put to grave prejudice by the amendment granted being barred by lapse of period and the expenses already incurred by the

petitioner.

Reliance is indicated to have been placed on behalf of the petitioner during the course of the proceedings before the learned Trial Court qua the application 6 Rule 17 CPC filed by the respondent to the present petition, as plaintiff to the said suit, whereby relief sought by way of amendment was time barred on the verdict of the ***Harish Relan v. Kaushal Kumari Relan & Ors.*** in RFA (OS) No. 162/2014 to contend that the maintainability of the prayer for amendment has to be tested with reference to the date on which the challenge is sought to be incorporated as valuable rights are created in favour of the parties by operation of law of limitation. It was further contended that the delay may have the effect of foreclosing the availability of the remedy to a party.

The impugned order also reflects the observations of the Hon'ble Supreme Court in ***L.J.Leach & Company Ltd. v. M/s Jardine Skinner and Co.***: AIR 1957 SC 357 with specific reference *inter alia* to the paragraphs 15 and 16 which:

"(15). Plaintiffs have applied to this Court for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. The respondents resisted the application. They contend that the amendment introduces a new cause of action, that a suit on that cause of action would now be barred by limitation, that the plaintiffs had ample opportunity to amend their plaint but that they failed to do so, and that owing to lapse of time

the defendants would be seriously prejudiced if this new claim were allowed to be raised. There is considerable force in the objections. But after giving due weight to them, we are of opinion that this is a fit case in which the amendment ought to be allowed. The plaintiffs do not claim any damages for wrongful termination of the agreement. What they claim is only damages for non-delivery of goods in respect of orders placed by them and accepted by the defendants prior to the termination of the agreement by the notice. Clause 14 of the agreement expressly reserves that right to the plaintiffs. The suit being founded on Ex. A, a claim based on cl.14 thereof cannot be said to be foreign to the scope of the suit. The prayer in the plaint is itself general and merely claims damages. Thus, all the allegations which are necessary for sustaining a claim for damages for breach of contract are already in the plaint. What is lacking is only the allegation that the plaintiffs are, in the alternative, entitled to claim damages for breach of contract by the defendants in not delivering the goods..."

*"(16) It is no doubt true that Courts, would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. **But, that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interest of justice.**"* (emphasis supplied)

which specifically lay down that though undoubtedly the Court will

decline to allow the amendment if a fresh suit on the amended claim had become barred by limitation on the date of application, this is a factor to be taken into account in exercise of the discretion as to whether the amendment should be allowed, and does not affect the power of the Court to order it if that is required in the interest of justice.

To similar effect are the observations of the Supreme Court in ***A.K.Gupta & Sons v. Damodar Valley Corporation***: 1967 AIR SC 96, to the effect:

"It is not in dispute that at the date of the application for amendment a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new cause of action particularly when a suit on new case or cause of action is barred : Weldon v. Neale,⁹ But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation." (emphasis supplied)

with specific observations that it was also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts particularly when a new suit on the same would be barred nevertheless it is also well

recognized that where the amendment does not constitute a new cause of action or raise a different or additional approach to the same facts, the amendment would be allowed even after expiry of the statutory period of limitation.

The verdicts in ***Pankaja and Anr. v. Yellappa (D) by LRs and Others***, AIR 2004 SC 4102 and ***Raghu Thilak V. S. Rayyapan***; 2001 RLR 217(SC) relied upon by the Trial Court and the verdict in ***T.N. Alloy Foundary Co. Ltd. v. T.N. Electricity Board & Ors***; 2004(3) SCC 392 also follow the ratio in the verdict ***L.J. Leach and Co. Ltd. & Anr. V. Messers. Jardine Skinner and Co.*** and observed to the effect:

"There is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The Jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleading., Each case depends on the factual background of that case."

(emphasis supplied)

"The purpose and object of Order 6 rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various Courts. It is true that amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt hyper-technical approach, Liberal approach should be the general rule particularly in cases where other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are followed in the pleadings to avoid uncalled for multiplicity of litigation."

there is thus no infirmity in the impugned order. The petition and the accompanying application are thus declined.

ANU MALHOTRA, J

SEPTEMBER 24, 2018/sv