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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 89/2019

SARANJIT SINGH AHLUWALIA

..... Petitioner

Through: Mr.Puneet Singh, Advocate

versus

JASBIR SINGH

..... Respondent

Through: Mr.Inder Bir Singh, Adv for the
caveator

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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06.02.2019

Cav.61/2019

The caveator has been heard. The caveat stands discharged.

CM(M) 89/2019 and CM. Nos. 2746-48/2019

Vide the present petition, the petitioner assails the impugned order dated 14.11.2018 of the court of the learned JSCC-cum-ASCJ-cum-GJ (West), in Suit No. 7775/16 vide which *inter alia* an application under Order VI Rule 17 CPC read with Section 151 of the CPC filed on behalf of the petitioner as the plaintiff of the said suit was declined.

A perusal of the application that was filed by the petitioner before the learned Trial Court indicates that the petitioner has submitted therein that the plaintiff had filed the suit seeking permanent and mandatory injunctions and damages and had sought damages on account of loss faced in terms of the construction fee paid

to the contractor as well as damages on account of loss of rental income and that the plaintiff has specifically pleaded and claimed in Para '8F' of the amended plaint about the damages on account of loss of rental income @ Rs.15,000/- per month w.e.f 30.06.2014 till the filing of the amended plaint and similarly thereafter until the defendant No.4 provided access to the plaintiff to his portion B of the aforesaid property from the area marked as A-B-C-D in the annexed site plan but that due to an inadvertent and *bona fide* error the claim/relief of *pendente lite* and future damages on account of loss of rental income i.e., damages @ Rs.15,000/- per month on account of loss of rental income during the pendency of proceedings and future damages, until the defendant No.4 provided such access to the plaintiff, remained unmentioned and thus the petitioner sought addition of prayer clause 'g' to the plaint which prayer sought to be incorporated reads to the effect:

“ g. Pass a decree in favour of plaintiff and against the defendant no.4 for the recovery of pendent lite and future damages @ Rs.15,000/- per month on account of the loss of rental income during the pendency of proceedings and future damages, until the defendant no.4 provides access to the plaintiff to his portion B of the aforesaid property from the area marked as A-B-C-D in the annexed site plan.”

The petition is opposed vehemently on behalf of the respondent to the present petition, who is arrayed as defendant No.4 to the said suit, submitting to the effect that there were terms of settlement arrived at between the parties pursuant to which the petitioner would have no rights of way in relation to the portion qua which he seeks the

grant of future damages and *pendente lite* damages on the stated construction in not having been so allowed allegedly by the defendant No.4.

The said aspect apparently is an aspect of trial in relation to which the proceedings of the suit are already pending.

As indicated, on a perusal of the plaint that has been filed on behalf of the plaintiff i.e., the amended plaint dated 20.3.2015 a perusal of para 8 (f) thereof indicates to the effect that it was averred as follows:

“ 8(f) That plaintiff is been obstructed to access to his property i.e. Portion B of the above said property and to construct the same, from where he was expecting a rental income of Rs.15,000/- (Rupees Fifteen Thousand only) per month. The defendant no. 4 began with his construction on or about 1.03.2014 and completed the same on or about 30.6.2014 and almost the similar time was required for plaintiff to construct his portion, therefore, since the date of 1.7.2014 plaintiff could have rented this portion to gain an extra income of Rs.15,000/- (Rupees Fifteen Thousand only) per month, for which now he is facing monetary losses solely and only because of unlawful, illegal and illicit conducts of defendant no.4 and now he is liable to pay to plaintiff as he claims from him for the damages caused to him in terms of loss of rental income which amounts to Rs.90,000/- (Rupees Ninety Thousand only) up to the date of filing this application and similarly thereafter until the defendant no.4 provides access to plaintiff to his portion B of abovesaid property from the area marked as A-B-C-D in the site plan. The plaintiff undertakes

*to pay the amount awarded for hereafter period
by this Hon'ble Court."*

Apparently, there is nothing new that the petitioner seeks to incorporate through the prayer clause 'g' through the application under Order VI Rule 17 CPC that had been declined by the learned Trial Court. It is apparent that the petitioner by not being permitted to seek the prayer as made through the application under Order VI Rule 17 CPC would be caused grave prejudice.

In the circumstances, the impugned order dated 15.11.2018 in Suit No. 7775/2016 of the JSCC-cum-ASCJ-cum-GJ (West) to the extent that it declined the application under Order VI Rule 17 CPC by not permitting the incorporation of the prayer clause 'g' to the amended plaint as amended on 20.3.2015 is set aside with the prayer clause 'g' allowed to be so incorporated. The defendant No.4 is permitted to file the response to the said clause 'g' if the defendant No.4 so seeks.

The petition and the accompanying applications are thus disposed of.

ANU MALHOTRA, J

FEBRUARY 06, 2019/sv