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

\+ CM(M) 107/2019 & CM APPL.3312/2019

ASHWANI KUMAR JAIN ..... Petitioner

Through: Mr. Ashok Kumar Sharma, Advocate.

versus

B.R. SETHI & ANR. ..... Respondents

Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

<u>O R D E R</u>

% **23.01.2019**

<u>CM APPL. 3311/2019 (Ex.)</u>

Exemption allowed subject to all just exceptions.

The application stands disposed of.

<u>CM(M) 107/2019 & CM APPL.3312/2019</u>

Initial submissions have been made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 06.12.2018 of the Court of the learned ADJ-03 (North-West), Rohini Courts, Delhi vide which an application under Order VI Rule 17 of the CPC r/w Section 151 of the CPC filed on behalf of the petitioner herein arrayed as defendant to CS No.577800/16 seeking to amend the written statement was declined.

A bare perusal of the impugned order indicates that the matter has reached at the stage of final arguments after completion of evidence of both the parties and it has also been observed *inter alia* to the effect that the amendments sought are not required for the just and appropriate adjudication of the suit.

Taking into account the factum that the suit that had been filed by the plaintiff i.e. the respondent arrayed to the present petition is one seeking possession, damages and mesne profits of the immovable property of the plaintiffs contending to the effect that the defendant was the licensee in respect of shop no.1 vide license agreement dated 01.11.1982 and that the defendant had filed his written statement in the same and issues were framed on 11.05.2016 and after framing of issues, both parties had examined their witnesses.

Through the application, that had been filed on behalf of the petitioner herein i.e. the defendant to the said suit, the averments that are sought to be brought forth by the applicant herein are set forth as being to the effect:-

> ***7. That the defendant has came to know that the plaintiffs themselves are violator of the building bylaws and in the entire building of the suit premises whatever construction or changes authorized or unauthorized has been made, they were done by the plaintiffs and even the plaintiffs converted the bathroom of the building into a shop which is contrary to the sanctioned building plan and that was let out to the tenant Sh. Sanjay Goyal S/o Sh. J.P.Goyal. The shop constructed and let out to Sh. Sanjay Goyal is contrary to the sanctioned building plan and in the same building by covering the staircase, the plaintiffs created another shop which was let out to the tenant Sh. Dinesh Kumar S/o Sh. Raj Singh and the said tenant is running the business of selling water in the form of bottles from the said unauthorized shop located in the building and thus the present suit of the plaintiff is not maintainable as they themselves are the guilty party and' as such the suit is liable to be dismissed with cost.***

8. That the plaintiffs in the suit has stated that the defendant was paying the licensee fee for the suit premises, whereas the defendant is in possession of the shop as a tenant and the rent of the shop is being paid by the defendant which is duly entered in the books of account of the defendant and the books of accounts are duly audited, the audit report would facilitate the Hon'ble court to reach at the actual and factual position of the matter in controversy.

9. That the defendant is running a business, having a Sales Tax Registration & GST number of the said business issued by the concerned authorities. The Sales-Tax authorities and GST authorities without verifying the absolute and control of the shop do not issue/sanction the registration number. So, the relationship between the parties is of tenant and landlord and as such the suit is not maintainable and liable to be dismissed with cost.

10. That the defendant's shop/suit property got damaged on account of outbreak of fire in year 2011 and the entire shop as well as stock in the shop got damaged, which the defendant got repaired/ restored in its original position after getting compensation for damages from the National Insurance Company and the record of Delhi Fire Service, Delhi Police and National Insurance Company are explicit of the fact that the suit premises was/is in the possession of the defendant. Thus the present suit of the plaintiff is without any cause of action and as such the same is liable to be dismissed with cost."

It is sought to be submitted through the said averments sought to be incorporated into the written statement that whatever constructions that were raised in the building where the suit premises are situated were raised by the plaintiff and were raised by the plaintiff unauthorizedly. *Inter alia* it has been sought to be submitted through these averments that the defendant to the said suit i.e. the petitioner herein has Sales Tax registration and a GST number for running the business as issued by the concerned authorities and that the Sales Tax Authorities and GST Authorities could have issued such registration only after requisite sanction and that the books of the account of the defendant are duly audited and that the audit report would facilitate the court to reach appropriate adjudication for the factual position of the matter in controversy to bring forth that the defendant to the said suit i.e. the petitioner herein was not a licensee but a tenant of the premises in question.

It has been submitted on behalf of the petitioner that the aspect of the registration with the Sales Tax Authority has not been taken into account vide the impugned order dated 06.12.2018 and only one aspect of the submission sought to be made through the application under consideration in relation to stated alleged unauthorized construction raised by the plaintiff of the suit i.e. the respondent to the present petition has been taken into account.

It has also been submitted by the petitioner herein that due to a fire that had broken out at the premises of the petitioner, the documents in relation to the GST registration could not be submitted with the written statement.

On a consideration of the submissions that have been made, the averments sought to be incorporated through the application under Order VI Rule 17 of the CPC dated 31.08.2018 and the impugned order dated 06.12.2018, it is apparent that the aspect of registration of the defendant's business with the Sales Tax Authorities and the aspect of any unauthorized construction raised by the plaintiff of the said suit were well known to the defendant at the time of submission of the written statement as well as at the time of leading evidence. In the circumstances, the observations of the learned Trial Court to the effect that the defendant to the suit i.e. the petitioner herein cannot be said to have exercise due diligence in submission of his submissions at such stage, cannot be faulted with.

There is no merit in the present petition and thus, the present petition and the accompanying application CM APPL.3312/2019 are declined.

ANU MALHOTRA, J

JANUARY 23, 2019/NC