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

Decided on: 23.07.2019

+ CM(M) 1092/2019 & CM APPL. 32935-32936/2019

HARI CHAND AGGARWAL
(DECEASED) THR LRS

..... Petitioner

Through: Mr. Naveen Kr. Chaudhary,
Advocate with Mr. Kanwal
Chaudhary, Advocate.

versus

M/S GOBIND PERSHAD
JAGDISH PARSHAD & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The present petition under Article 227 of the Constitution of India has been filed against an order dated 18.04.2019 passed by the learned District and Sessions Judge, New Delhi in RCT No. 147/2016 and order dated 11.08.2015 passed by the Rent Controller in Eviction Petition No. 11/2009. By the order dated 11.08.2015, the Trial Court dismissed the application of the petitioner herein under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") for amendment of the written statement filed by him. By the impugned order dated 18.04.2019, the Appellate Court has dismissed the petitioner's appeal against the order dated 11.08.2015.

2. The eviction proceedings were filed by the respondent no.1 herein in the year 2003, originally against the father of the petitioner herein. The

original respondent having died in 2012, his legal heirs including the petitioner were brought on record. In October, 2014, the petitioner filed an application under Order VI Rule 17 of the CPC for amendment of the written statement. By this time, evidence had already commenced in the eviction proceedings.

3. The contention raised by the petitioner in the application was that he had received a notice from respondent no.5 in the eviction proceedings (Om Prakash Aggarwal, who is also impleaded in this petition as respondent no.5) under Order XII Rule 8 of the CPC in response to which certain documents had been supplied and placed on record by the learned counsel for the petitioner herein. Those documents were a notice dated 20.05.1952 under Section 22(2) and 38 of the Indian Income Tax Act, 1922 addressed to M/s Aggarwal Restaurants and an assessment order dated 28.08.1952 in respect of the said entity. It was contended that the said documents were neither within the knowledge nor within the possession of the petitioner herein and had recently come to his knowledge. The petitioner sought an amendment of the written statement based on these documents.

4. In the original written statement, the respondent no.2 had averred as follows:-

"5. That the para No.5 of the Petition is correct to the extent that the Respondent No. 2 is doing the business in the suit premises. However, it is incorrect that the Respondent Nos. 1 to 4 has unauthorisedly and illegally parted with the possession of the portion shown in red colour in site plan to the Respondent No. 5. It is submitted that the Respondent No.5 and Late Shri Raghubir Singh were real brothers and the suit premises was being used jointly by both the brothers as they were living together in the joint family. Since the Respondent No. 5 was doing business alongwith his brother late Shri Raghubir Singh Aggarwal, hence there is no question of

subletting the part of the premises to Respondent No. 5. After the death of late Raghbir Singh, the Respondent No. 5 has continued to do his business in the premises in the question. It is further submitted that the Respondent No. 5 was doing business alongwith late Shri Raghbir Singh Aggarwal since the date of letting. It is absolutely wrong that the Petitioner got knowledge of this fact only in the year 2002. It is submitted that the Petitioner/Landlord had full knowledge right from the commencement of the tenancy of late Shri Raghbir Singh Aggarwal that the Respondent No. 5 is also doing business alongwith Late Raghbir Singh in the suit premises. It is also wrong that the Respondent No. 5 was paying any rent separately to late Shri Raghbir Singh. It is however absolutely incorrect and wrong that a portion of the suit premises was sublet to Respondent No. 5..."

[Emphasis Supplied]

5. The petitioner sought an amendment on the basis that certain facts had been omitted from the written statement and referred to it as “act of omission and also due to inadvertence and oversight”. On this ground, the petitioner sought addition of the following paragraph in the written statement after the paragraph extracted above:-

“...It is submitted that a notice dated May 20, 1952 under sections 22 (2) and 38 of the Indian Income Tax Act, 1922 was received by Shri Raghbir Singh C/o M/s. Aggarwal Restaurant. Mr. Raghbir Singh attended the hearing before the Income Tax Officer through his Authorised Representative and thereafter an Assessment Order dated August 28, 1952 was passed by the Income Tax Department in respect of M/s. Aggarwal Restaurant H-Block, Connaught Place, New Delhi. During the course of the hearing, Mr. Raghbir Singh through his Authorised Representative brought to the notice of the Income Tax Officer that the Parchuna shop was handed over by Mr. Raghbir Singh to his brother Shri Om Prakash (Respondent No.5) much prior to accounting period i.e. March 1952. Since then, Shri Om Prakash (Respondent No. 5) has been carrying out Parchuna/Karana/Baniya/Provision store

separately and independently from H-21. It was further mentioned in the said order that the Respondent No.5 was separate from Shri Raghbir Singh. The said contention of Shri Raghbir Singh was considered by the Income Tax Officer and the offer given by Shri Raghbir Singh to considered his income for the assessment year 1952-1953 as Rs. 6,600/- (Rupees Six Thousand Six Hundred Only) was accepted by the Income Tax Officer and appropriate order was passed in this regard. Since then, Raghbir Singh and Om Prakash were assessed separately in respect of their respective business which they were carrying out from their respective shops.”

[Emphasis Supplied]

The petitioner reiterated that these facts were left out in the original written statement due to a *bona fide* mistake as he was not able to lay his hands on the concerned documents.

6. The Trial Court did not accept the petitioner’s application, noting that the matter was already at the stage of cross-examination of the petitioner’s witnesses and that the documents sought to be placed on record were not referred to in the written statement filed by the petitioner herein. The Trial Court also recorded that the petitioner had not specified the date or manner in which the orders came into his possession.

7. The matter was carried to the Rent Control Tribunal in appeal and the Appellate Court has also rejected the appeal with reference, *inter alia*, to the proviso to Order VI Rule 17 of the CPC and to the judgment of the Supreme Court in *Revajeetu Builders and Developers vs. Narayanswamy & Sons* (2009) 10 SCC 84. The Appellate Court has held that the proposed amendment would be tantamount to permitting the petitioner to substitute an entirely new or contradictory plea, and that the facts mentioned in the

application do not demonstrate an exercise of due diligence justifying an amendment of pleadings after commencement of trial in terms of the proviso to Order VI Rule 17 of the CPC.

8. Having heard learned counsel for the petitioner, I do not find any ground to interfere with the concurrent judgments of the Trial Court and the Appellate Court in this petition under Article 227 of the Constitution. Both the Courts have correctly found that the case pleaded in the original written statement was that the Late Raghubir Singh (the grandfather of the petitioner) and the respondent no.5 were living in a joint family and conducting a joint business from the suit premises. To the contrary, the amendment sought to be incorporated indicated that the suit premises was handed over by the Late Raghubir Singh to his brother (the respondent no.5) much prior to March, 1952. To this extent, the proposed amendment is contrary or inconsistent with the stand taken by the petitioner in the written statement.

9. Further, the discussion of the Appellate Court with regard to the effect of the proviso to Order VI Rule 17 of the CPC is also unexceptionable. Order VI Rule 17 of the CPC, as amended in 2002, provides as follows:-

“17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The contents of the amendment application in so far as it seeks to explain the delay in seeking amendment are as follows:-

“9. It appears that act of omission and also due to inadvertence and oversight, Respondent No. 2 has not mentioned the facts as stated in foregoing para 8 of the Application and the same are required to be incorporated in the Written Statement.

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11. It is submitted that the aforementioned facts were left in the original Written Statement due to bonafide mistake as Respondent No.2 was not able to lay his hands on the documents details of which are given in para 5 of the foregoing Application.”

The requirement of the proviso to Order VI Rule 17 of the CPC is one of “due diligence”. The aforesaid contents of the application do not disclose diligence on the part of the petitioner but in fact refer expressly to his “inadvertence and oversight”. To permit an amendment after the commencement of trial on the basis of an application of this nature would be directly contrary to and inconsistent with the requirements of the proviso.

10. The approach of the Trial Court and the Appellate Court are, in my view, consistent with the judgments of the Supreme Court on this aspect including the principles laid down in *Revajeetu Builders and Developers* (supra) cited by the Appellate Court and the recent judgment of the Supreme Court in *M. Revanna vs. Anjanamma* (2019) 4 SCC 332. Paragraph 7 of the judgment in *M. Revanna* (supra) reads as follows:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule

17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

10. Learned counsel for the petitioner further submitted that the documents in question have in fact been taken on record by the Trial Court and also that the stand taken in the written statement of other respondents are consistent with the amendment which the petitioner sought. It is made clear that the orders passed on the petitioner's application for amendment of the written statement, including this order, do not seek to alter the position regarding any document which may otherwise have been taken on record by the Trial Court or the pleadings of any other party. These observations are confined to the question of whether the petitioner herein ought to be permitted to amend his written statement.

11. For the reasons aforesaid, the present petition is dismissed.

PRATEEK JALAN, J.

JULY 23, 2019

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