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

% Judgment delivered on: 05.09.2019
+ C.R.P. 167/2019

BINDU KUMARI Petitioner

versus

SANTOSH KUMAR Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Gopal Singh, Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.35088/2019 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 167/2019 & CM APPL. 35089/2019 (stay), CM APPL. 35090/2019 (for condonation of delay)

1. Petitioner impugns order dated 18.03.2019, whereby, application under Order VI Rule 17 of the respondent/complainant has been allowed.

2. Learned counsel for the petitioner submits that the Trial Court has erred in allowing the application and has held that the petitioner is

a licensee.

3. Perusal of the order shows that initially case set up by the Plaintiff/respondent was that the petitioner/defendant is a mere licensee and he was seeking a direction thereby directing the petitioner to handover the peaceful vacant possession of the property in Suit. By the amendment, respondent seeks possession of the Suit property in occupation of the petitioner.

4. The Trial Court, in the impugned order, has merely noticed the contention of the respondent that the petitioner is a licensee and has not returned any finding of fact.

5. In any case, in an application under Order VI Rule 17, the Court is not to consider the merits of the amendment but has to consider *inter alia* as to whether the amendment changes the nature of the Suit. In the subject case, the respondent was seeking a direction in the original plaint thereby directing the petitioner to handover the peaceful vacant possession. By amendment, the respondent has sought the relief of possession which is identical in nature to the relief earlier sought. The Amendment does not change the nature or character of the Suit.

6. The issue as to whether the petitioner is a licensee or has independent rights to the property in Suit, would be considered by the Trial Court after trial. The contention of the Respondent noticed in the impugned order is not a finding of fact returned by the Trial Court.

7. Further, the grievance is that the respondent by the amendment has deleted the relief of declaration. In case the plaintiff respondent has deleted the relief of declaration, the effect thereof would be considered by the Trial Court at an appropriate stage.

8. I find no infirmity in the impugned order. There is no merit in the petition. Petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 05, 2019
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