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

Decided on: 20th August, 2019

+ CM(M) 1215/2019

TELECOMMUNICATION

CONSULTANT INDIA LTD & ANR

..... Petitioners

Through: Mr. Nikhilesh Krishnan, Advocate.

versus

ANIL BHASIN & ANR

..... Respondentss

Through: Mr. Asheesh Jain & Mr. Ankur
Bhasin, Advocate for the
Caveator/R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CAV 824/2019

With the appearance of the learned counsel for the caveator, the
caveat stands discharged.

CM APPL. 37093/2019 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 1215/2019, & CM APPL. 37092/2019

1. This petition under Article 227 of the Constitution of India is directed against an order dated 04.07.2019 passed by Additional District Judge-01 (South), Saket District Courts, New Delhi in CS No. 8543/2016 whereby the Trial Court dismissed the application of the petitioners [defendant Nos. 1 and 2 in the suit] for amendment of the written statement under Order VI

Rule 17 of the Code of Civil Procedure, 1908 (hereinafter, “the CPC”).

2. The suit was filed by the respondent no. 1 in April, 2019 for recovery of sum of ₹18,00,000/- approximately. The petitioners filed their written statement on 23.09.2009 and the suit came to be dismissed on the ground of limitation on 09.07.2012. This Court allowed the appeal of respondent no. 1 against the said order by a judgment dated 06.01.2016, leading to the restoration of the suit in the Trial Court. Issues were framed on 14.05.2016 and evidence of the plaintiff commenced on 30.05.2017. The petitioners filed the application under consideration on 13.09.2017, seeking amendment of the written statement in view of documents dated 21.05.2011 and 15.03.2013 received from MTNL [defendant no. 3 in the suit, impleaded as respondent no. 2 herein].

3. The Trial Court has declined permission to amend the written statement on the ground of delay. It has been held that the petitioners have not satisfied the requirement of “due diligence” as provided in the proviso to Order VI Rule 17 of the CPC.

4. Order VI Rule 17 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.”

5. Having heard learned counsel for the petitioners, and respondent no. 1 who appears on caveat, I am of the view that the order of the Trial Court

is not susceptible to interference under Article 227 of the Constitution. Learned counsel for the petitioners urged that the documents could not be placed on record at the time they were received because in the case of the document dated 15.03.2013, the suit had been dismissed by the Trial Court and the plaintiff's appeal against the said order was still pending. However, no explanation was offered as to why the documents could not have been filed and the consequential amendment sought, between the time this Court allowed the appeal of respondent no. 1 on 06.01.2016 and commencement of the trial before the Trial Court.

6. The application of the petitioners under Order VI Rule 17 of the CPC contains the following plea with regard to the delay:-

“7. That the defendant nos. 1 & 2 could not make above submissions earlier in written statement as above letters dated 21.05.2011 & 15.03.2013 from MTNL came to be received by the defendant after 2 & 4 years respectively of institution of the captioned suit and at time when the matter was being heard on the issue of suit being barred by limitation and thereafter captioned suit was rejected by the Ld. Predecessor of this Hon'ble Court vide order dated 09.07.2012 and appeal of plaintiff being RFA No. 487/2012 was pending before the Hon'ble Delhi High Court and due to the same, neither said documents could be filed nor submissions could be made regarding the same by amendment. The said RFA was allowed by the Hon'ble Delhi High Court vide judgment dated 06.01.2016 thereby demanding the matter to this Hon'ble Court. However, the then concerned officer of the defendant no. 1 handling the matter in March 2013, Mr. Ashutosh Pandey (GGM WB) who was on deputation, got repatriated to his parent organization in March 2015 and when the suit was remanded in January 2016, the present officer Mr. K.P. Gupta (who took charge in August 2015) was unaware of the above letters of MTNL. Said Letters of MTNL came to the notice of Mr. K.P. Gupta while going through the old

records recently. Thus, for above bonafide reasons and due to unavoidable circumstances, defendant nos. 1 & 2 could not earlier seek amendment of existing written statement based on above documents despite due diligence and filed the said letters. So far as sheet of MTNL containing details of recoveries made by MTNL in respect of above pillars with office notings of MTNL as mentioned in preceding para 5 is concerned, as stated above, said document came to notice recently while going the old records.”

7. The finding of the Trial Court that the aforesaid explanation does not constitute “due diligence” within the meaning of the proviso Order VI Rule 17 is unexceptionable. The Supreme Court in *Chander Kanta Bansal vs. Rajinder Singh Anand* (2008) 5 SCC 117 has elaborated on the meaning of “due diligence” thus:-

“15. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of “due diligence” the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application.

16. The words “due diligence” have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), “diligence” means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. “Due diligence” means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According

to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) “due diligence”, in law, means doing everything reasonable, not everything possible. “Due diligence” means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

The requirement of “due diligence” has been emphasised by the Supreme Court in *Vidyabai and Ors. vs. Padmalatha and Anr.* (2009) 2 SCC 409 as a jurisdictional pre-condition for the amendment of pleadings, if the trial has commenced. The relevant paragraph, to that effect, is as follows:-

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

“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.”

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

8. In view of the aforesaid judgments, the petitioner cannot be stated to have satisfied the requirements of due diligence.
9. Learned counsel for the petitioner cited three judgments of the Supreme Court in support of the present petition. In *Mahila Ramkali Devi and Ors. vs. Nandram (dead) Through Legal Representatives and Ors.* (2015) 13 SCC 132, the Supreme Court emphasised the general principles relating to amendment of pleadings and the generally liberal approach of

the Courts in this regard. In *State of Bihar and Ors. vs. Modern Tent House and Anr.* (2017) 8 SCC 567, the Court permitted an amendment which was sought to elaborate on the facts originally pleaded in the written statement. In *Raj Kumar Bhatia vs. Subhash Chander Bhatia* (2018) 2 SCC 287, while setting aside an order of the High Court disallowing the amendment, the Supreme Court has referred to the limited jurisdiction of the High Court under Article 227 of the Constitution.

10. The first two judgments cited by learned counsel for the petitioner do not advert to the requirements of proviso to the Order VI Rule 17 of the CPC and it is clear that the amendment was not opposed on this ground. In *Raj Kumar Bhatia* (supra), the Supreme Court has noted the submission that in absence of due diligence on the part of the appellant, the amendment could not have been allowed. The High Court having set aside the order of the Trial Court allowing the amendment, the Supreme Court has held as follows:-

“12. This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhana Lodh v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762] , this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the

parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The trial court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21-9-2013 that an amendment of the plaint was allowed by the trial court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the plaintiff.”

11. It is evident from the above that the judgment of the Supreme Court does not turn on the question of delay. The submission regarding the effect of the proviso having been noted, the Supreme Court has not found that the parties seeking amendment had acted without due diligence. Further, relevant for the purpose of disposal of the present petition, in the said judgment, the Court has reiterated the limited jurisdiction of the Supreme Court under Article 227 of the Constitution. In the present case, unlike the case before the Supreme Court, the Trial Court has disallowed the amendment and I do not find the decision of the Trial Court to be vitiated by any error of jurisdiction.

12. Consequently, the present petition stands dismissed.

PRATEEK JALAN, J.

AUGUST 20, 2019/‘pv’/s