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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 2nd September, 2019

+ **CM (M) 1292/2019**

M/S ROOP SAREES & ANR. Petitioners
Through: Mr. Manish Vashisht, Mr. Sameer
Vashisht & Mr. Manashwy Jha,
Advocates (M-9013980691)

versus

ATUL KAPOOR & ORS. Respondents
Through: Mr. N.P. Singh, Advocate (M-
9891110678)

AND

+ **CM (M) 1293/2019**

M/S ROOP SAREES & ANR. Petitioners
Through: Mr. Manish Vashisht, Mr. Sameer
Vashisht & Mr. Manashwy Jha,
Advocates.

versus

ATUL KAPOOR & ORS. Respondents
Through: Mr. N.P. Singh, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CAV 876/2019 in CM(M) 1292/2019

CAV 878/2019 in CM(M) 1293/2019

1. The caveat is discharged as the Caveator has appeared.

CM APPL. 39249/2019 (for exemption) in CM(M) 1292/2019

CM APPL. 39264/2019 (for exemption) in CM(M) 1293/2019

2. Allowed, subject to all just exceptions. Applications are disposed of.

CM (M) 1292/2019 & CM APPL. 39248/2019

CM (M) 1293/2019 & CM APPL. 39263/2019

3. The present petitions have been filed challenging the order dated 16th

July, 2019 by which the Id. ADJ has allowed the application under Order VI Rule 17 CPC. The Id. ADJ's order arises out of a remand order passed by this Court on 8th March, 2019 to decide the application under Order VI Rule 17 afresh. The said order reads as under:

“CM APPL. 10915/2019

The matter is fixed for 04.04.2019 and is taken up today on CM APPL. 10915/2019 filed on behalf of the respondents seeking a vacation of the interim order dated 26.11.2018 vide which the hearing of the final arguments in the suit before the learned Trial Court was kept in abeyance. It is considered thus appropriate to take up the petition itself for hearing.

The petitioner assails the impugned order dated 04.07.2018 of the learned Trial Court of the ADJ-14, Central, THC, Delhi, in CS DJ No. 613947 of 16, which reads to the effect: -

“CS DJ No.: 613947 of 16 04-07-2018

Present: None for the parties.

I considered the application of the plaintiff under Order VI Rule 17 of CPC for amendment of the plaint. Considering submissions of Id. Counsel for the parties, the amendment application is allowed in the interest of justice. Amended plaint be filed accordingly with advance copy to the opposite party.

Case is adjourned for filing of WS to the amended plaint, if any, and for PE for 28-08-2018.

*ADJ-14, Central,
THC, Delhi/04-07-2018”*

Inter alia, through the petition, it has been submitted that the stated order is a wholly non-speaking order and does not give any reason in relation to the aspect as to why the application under

Order VI Rule 17 of the CPC filed by the respondents seeking amendment of the plaint at the stage of the final arguments was allowed. The same is apparent from the impugned order dated 04.07.2018 itself that after considering submissions of the learned counsel for the parties, the amendment application was allowed in the interest of justice. Learned counsel for the respondents has however submitted that the additional issues were framed on 18.10.2018 by the learned Trial Court and that there has thus been a merger of the order dated 04.07.2018 which can thus not be assailed in view of the framing of the additional issue. However, the mere framing of the same does not detract from the aspect that the impugned order dated 04.07.2018 does not show any adjudication on the merits or demerits of the prayer that had been made. The impugned order dated 04.07.2018 of the learned Trial Court and the consequential order dated 18.10.2018 both in CS DJ No.: 613947 of 16 as was pending before the learned Trial Court of the ADJ-14, Central, THC, Delhi are thus set aside with the directions to the learned Trial Court to adjudicate the application under Order VI Rule 17 of the CPC filed by the respondents on 23.02.2018 by speaking order after giving opportunity to both sides to make submissions.

The petition and its accompanying application are disposed of.

The earlier date of hearing i.e. 04.04.2019 stands cancelled”

4. The crux of the dispute between the parties is that the Plaintiffs/Respondents (*hereinafter ‘Plaintiffs’*) had filed a suit seeking eviction and ejectment of the Petitioners/Defendants (*hereinafter ‘Defendants’*) from the suit property, being Municipal No. 10188 and 10193, 3, Arya Samaj Road, Karol Bagh, New Delhi – 110005, as also recovery of *mesne profits* and damages. In the said suit, the Plaintiffs had prayed for

certain reliefs. The matter proceeded to evidence and at the stage of final arguments, the Plaintiffs moved an application under Order VI Rule 17 CPC seeking to add a relief in the suit. This application was opposed by the Defendants but has now been permitted by the impugned order.

5. Mr. Manish Vashisht, Id. Counsel submits that the addition of the relief in respect of arrears of rent is completely contrary to law as the same has been allowed post the trial of the suit and is hit by the proviso to Order VI Rule 17 CPC. He relies upon the following judgments:

- ***Ajendraprasadji N. Pandey & Anr. v. Swami Keshavprakeshdasji N. & Ors., (2006) 12 SCC 1***
- ***Jitender Agal v. Smt. Reena Kakar, 132 (2006) DLT 15***

6. He submits that the relief of arrears of rent is completely barred by limitation and the plaint could not have been allowed to be amended to add a relief which is barred by limitation.

7. On the other hand, Id. counsel for the Plaintiffs submits that the pleadings were already there in the plaint in respect of arrears of rent. Only a relief was sought to be added. He relies upon the judgment in ***Pankaja & Anr. v. Yellapa (Dead) by LRs & Ors., (2004) 6 SCC 415.***

8. This Court has perused the plaint, the application for amendment and the impugned order. It is relevant to point out that in the plaint, the Plaintiffs made the following averments:

“14. That the defendants are liable to pay the arrears of rent amount @ Rs.5123/- per month w.e.f. May 2005 till 15th June 2008 i.e. Rs.1,92,113/- along with compound interest @ 24% per annum on the principal amount of Rs.1,92,113/- w.e.f. May, 2005 till the date of payment.

...

18. That the valuation of the suit for the purpose of court fees and jurisdiction for the relief of ejectment is Rs.1,92,113/- as arrears of rent and for the relief of mesne profits from the date of termination of tenancy i.e. 16-06-08 @ Rs.2.25,000/- per month and appropriate court fee is affixed on the plaint. The plaintiffs undertake to pay the deficient court fee if any on the decretal amount of mesne profit etc

PRAYER: -

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to pass a decree in favor of plaintiffs and against the defendants: -

- a. for ejectment of the defendants with respect to Hall measuring 42ft X 35.5ft i.e. 1,500 sq. ft. of the right at the basement floor of property known as Kapoor Sadan bearing Municipal No.10188 and 10193, 3, Arya Samaj Road, Karol Bagh, New Delhi-110055 and
- b. For recovery of Rs.2,25,000/- per month towards mesne profits/damages for use and occupation by the defendants from the date of termination of tenancy i.e. 16-06-08 with interest @ 24% p.a. thereon till the date of handing over the vacant possession of suit property and paying the arrears of mesne profit to the plaintiffs; and
- c. Award costs of the suit to the plaintiffs; and
- d. Grant such other and further relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

9. A perusal of the above averments in the plaint clearly shows that the Plaintiffs had taken three pleas in the plaint:

- i) For ejection
- ii) For arrears of rent; and
- iii) For mesne profits

10. The manner in which the prayer has been structured clearly shows that while two of the reliefs were contained in the prayer clause, despite the quantification of the arrears of rent, in the earlier paragraphs in the Plaint, the same does not find a mention in the prayer clause. It was under these circumstances, that the Id. Trial Court has allowed the amendment to be made.

11. A perusal of the law on the subject makes it clear that in the judgment of ***Ajendraprasadji N. Pandey & Anr. v. Swami Keshavprakeshdasji N. & Ors. (supra)***, the Supreme Court observes the following regarding Order VI Rule 17 CPC:

“42. It is to be noted that the provisions of Order 6 Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.

43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the

Rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief.”

12. A perusal of the above judgment clearly shows that in spite of due diligence, if the matter could not be raised before the commencement of trial, then the amendment can be allowed. In the present case, it cannot be said that the matter was not raised prior to the commencement of trial. A perusal of paragraphs 14 and 18 clearly shows that the question of arrears of rent has not only been quantified, but the monthly payment payable by the Plaintiffs has also been clearly mentioned. The Court fee too has accordingly been paid as per paragraph 18 of the valuation in the suit.

13. Under these circumstances, firstly, it cannot be held that the matter was not raised. Secondly, the proviso to Order VI Rule 17 would also not hit the present suit. The proviso would come into effect only if a completely new relief is being sought after the commencement of trial. This does not appear to be the case herein.

14. Insofar as the question of limitation is concerned, whether the arrears of rent are liable to be granted or not and if any portion of the arrears of rent is barred by limitation, is a question that has to be considered by the Trial Court at the time of final adjudication and not at this stage. The Trial Court shall consider whether in the prayer which has now been added i.e., arrears of rent for the period of May, 2005 to 15th June, 2008, any portion is barred by limitation and whether any portion is liable to be rejected or allowed.

15. Thus, the present petitions are being disposed of with the direction

that the allowing of the amendment i.e., relief in respect of arrears of rent, should not be construed as an opinion on merits on the question of whether the same is barred by limitation or not. Since the arrears of rent had been raised before the Trial Court in the plaint itself, the application under Order VI Rule 17 CPC has been correctly allowed. The same is allowed, subject to payment of costs of Rs.25,000/-. The amount of Rs.7,500/- already paid shall be given credit for. The costs shall now be deposited by the Plaintiffs in the Prime Minister Relief Fund. The proof of the same shall be brought on record before the Trial Court prior to the hearing of the matter.

16. Accordingly, the petitions and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 02, 2019
Rahul