

S-3 to 5

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM (M) 1368/2019 & CM APPL. 41344/2019

MALKHAM Petitioner

Through: Mr. Anand Yadav and Mr. Pradyumn
Rao, Advocates. (M:9810126454)

versus

MERA BABA INFRASTRUCTURE PVT. LTD. Respondent

Through: Mr. Virender Singh, Mr. Prateek
Badhwar & Mr. Ankit Gupta,
Advocates. (M:7840000405 &
9953030485)

WITH

✓ CM (M) 1369/2019 & CM APPL. 41346/2019

BABU RAM Petitioner

Through: Mr. Anand Yadav and Mr. Pradyumn
Rao, Advocates.

versus

MERA BABA INFRASTRUCTURE PVT LTD. Respondent

Through: Mr. Virender Singh, Mr. Prateek
Badhwar & Mr. Ankit Gupta,
Advocates.

AND

+ CM (M) 1370/2019 & CM APPL. 41348/2019

MUNSHI RAM Petitioner

Through: Mr. Anand Yadav and Mr. Pradyumn
Rao, Advocates.

versus

MERA BABA INFRASTRUCTURE PVT. LTD. Respondent

Through: Mr. Virender Singh, Mr. Prateek
Badhwar & Mr. Ankit Gupta,
Advocates.

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CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
19.11.2019

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1. The present petitions have been filed challenging the impugned order dated 20th August, 2019, by which the Petitioners'/Defendants' in CM(M) 1368/2019, CM(M) 1369/2019 and CM(M) 1370/2019 (*hereinafter, collectively referred to as "Defendants"*) application under Order VI Rule 17 CPC has been rejected by the Id. Trial Court.
2. The background is that suits for recovery of Rs.1,34,77,875/- in CM (M) 1368/2019, Rs.45,87,875/- in CM (M) 1369/2019 and Rs.60,80,125/- in CM (M) 1368/2019, were filed by the Respondent/Plaintiff - M/s. Mera Baba Infrastructure Pvt. Ltd. (*hereinafter, 'Plaintiff'*) against the Defendants. Issues were framed in the said suits on 3rd March, 2017. After framing of issues, the Defendants moved an application under Order VI Rule 17 CPC, in their respective suits, seeking to add one sub-paragraph in their written statements. The said applications were dismissed by the Id. Trial Court vide the impugned order. Hence, the present petition.
3. Id. counsel for the Defendants submits that the main plea the Defendants wish to add is in respect of loss suffered by them, in view of the legal position laid down by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136*. Id. counsel submits that the said judgment has made it compulsory for a Defendant, who resists the plea for recovery, to plead and prove the loss, if any, which it has suffered. In light of this requirement, the Defendants seek to add a sub-paragraph in their written statements.
4. On the other hand, Id. counsel for the Plaintiff submits that the

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affidavit on behalf of the Plaintiff was attested in May, 2017 and was, in fact, filed by the Plaintiff. However, he fairly concedes that the affidavit is yet to be tendered by his witness. In response, Id. counsel for the Defendants submits that the affidavit has, in fact, not been filed in May, 2017, but was filed in September, 2017.

5. A perusal of the record shows that the suits for recovery have been pending since 2016. Issues have been framed on 3rd March 2017, however, evidence is yet to be recorded. While there is no doubt that the applications under Order VI Rule 17 CPC have been filed only for adding a particular plea for loss suffered, the Id. Trial Court was under the mistaken impression that the evidence was filed in May, 2017. A typed copy of the affidavit, which is placed on record, suggests that the affidavit was, in fact, filed in September, 2017.

6. Be that as it may, in an application under Order VI Rule 17 CPC, the Court is not concerned with the merits of the amendment which is sought but is to only examine as to whether the Defendant has delayed the matter by raising the plea only at a belated stage or after commencement of trial. A perusal of the order sheet of the Id. Trial Court shows that the matter is being proceeded with and there are not many adjournments which have been sought by the parties.

7. Under these circumstances, the Defendants' applications to amend their respective written statements, is allowed. However, the objections and defences of the Plaintiff, in respect of the said plea, are left open completely. The amended written statements, which would be filed by the Defendants, would be responded to by the Plaintiff, by way of replication, within two weeks from the date on which the amended written statement is served. All

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objections in respect of the plea of loss suffered by the Defendants are left open to the Plaintiff, to be adjudicated in accordance with law.

8. Accordingly, it is directed as under:

- a) The amendment is allowed. The amended written statements be filed within one week.
- b) The replication is permitted to be filed within two weeks thereafter.
- c) An amended affidavit in evidence be filed by the Plaintiff, if required, before the next date for tendering of evidence before the Id. Trial Court.

9. The above permission for amendment is being granted, subject to a total payment of Rs.30,000/- as costs in all three suits, to be made by the Defendants, in equal share, to the Plaintiff. The costs shall be tendered prior to the commencement of evidence by the Plaintiff.

10. The petitions and all pending applications are disposed of in the above terms.

Prathiba
PRATHIBA M. SINGH, J.

NOVEMBER 19, 2019/dk