

\$~7

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

+ **FAO(OS) 111/2018 & CM APPL. 27187/2018 (*stay*)**

SUSHIL GAHLOT

..... Appellant

Through: Mr. Sunil Malhotra with Mr. Ashok
Kumar Gehlot, Advs.

versus

MOHINDER SINGH & ORS.

..... Respondents

Through: Mr. N.S. Dalal, Adv. for R-1.
Mr. Santosh Sharma, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

14.01.2019

%

1. Challenging an order dated 11.05.2018 passed by the learned Single Judge in CS(OS) 564/2016 dismissing an application for amendment of the written statement i.e. IA No.4226/2018 and IA No.4227/2018 raising a counter claim by amendment, this appeal has been filed under Section 10 of the Delhi High Court Rules.

2. Even though learned counsel for the appellant inviting our attention to various judgments including the judgment in the case of *Radhey Shyam Bagla (Since Deceased) Thr. LR's v. Smt. Ratni Devi Kahnani (Since Deceased) Through Legal Representatives*, RFA(OS) 5/1982 decided by Division Bench of this Court on 12.12.2014, argued that amendment of the nature prayed for can be allowed, we are of the considered view that the learned Single Bench dismissed the application for amendment primarily on the ground that the amendment in the written statement to include a counter

claim has been filed belatedly when the suit was said to be decided within 6 months and the suit is at the fag end of its decision. We are informed that now the entire evidence has been recorded in the suit and the suit is at the stage of final arguments. The learned writ court has granted liberty to the appellant to file a fresh suit with regard to the counter claim and refused to permit amendment on the ground that now at such a belated stage the amendment cannot be allowed.

3. In our considered view, once a suit is now set for final arguments, at this belated stage, by allowing the amendment the entire proceedings will be re-opened and when no prejudice is caused to the appellant as his right to file a separate suit is protected, we see no reason to make any indulgence into the matter.

4. In the facts and circumstances of the case, the law laid down in the case of *Radhey Shyam Bagla* (supra), may not help the appellant once we are of the considered view that when the suit is now set for final hearing indulgence into the matter which would render re-opening of the entire suit is not appropriate or proper.

Accordingly, the appeal stands dismissed. The pending application also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

JANUARY 14, 2019
kks