

\$~56

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 904/2018 & CM APPL. 10918-10919/2019
M/S ROOP SAREES & ORS Petitioner
Through Mr. Manish Vashisht, Mr. Sameer
Vashisht, Advs.

versus

ATUL KAPOOR & ORS Respondent
Through Mr. H.L. Rain, Adv. for R1 to R3.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **08.03.2019**

CM APPL. 10918/2019

The matter is fixed for 04.04.2019 and is taken up today on CM APPL. 10918/2019 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. 613917 of 16, which reads to the effect: -

“CS DJ No.: 613917 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 consideration & framing of additional issues 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.: 613917 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.

ANU MALHOTRA, J

MARCH 08, 2019/MK