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

Date of decision: 14th November, 2019

+ **CM (M) 554/2017 & CM APPL. 18891/2017**

CHANDRO DEVI & ORS.

..... Petitioners

Through: Mr. Alok Kumar, Ms. Manisha
Agrawal Narain, Mr. Amit Kumar &
Mr. Aakash Dhar (M-9810127735)

versus

**M/S MANAV BHARATI INDIA INTERNATIONAL SCHOOL &
ANR**

..... Respondents

Through: Mr. R.K. Vats, Advocate (M-
9891447838)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 10th March, 2017 by which the Id. Trial Court has permitted the impleadment of the society which runs the Plaintiff – M/s Manav Bharti India International School viz., M/s Manava Bharati Institute of Child Education as Plaintiff No.2, and has given the Plaintiffs the benefit of the proviso to Section 21(1) of the Limitation Act, 1963.

2. The background is that the Plaintiff-School had instituted a suit for possession against one Mr. Laxmi Chand seeking possession of the structure of the premises where the Defendant – Mr. Laxmi Chand and his family were residing. The case of the School is that the Defendant was a *mali* in the School. However, even after his termination and now even after his death, his family is refusing to vacate the suit property. In the written statement, the

Defendant took an objection that the School is not a legal entity and cannot file a suit in its own name. An application under Order I Rule 10 CPC has thereafter been moved for impleadment of the society which runs the School. The said application was decided by the Trial Court and the impleadment was allowed.

3. This order is challenged by the Petitioner/Defendant on the ground that the Society cannot be given the benefit of the proviso of Section 21(1) of Limitation Act, as non-impleadment of the society was not in good faith. The ld. counsel for the Petitioner specifically relies upon the definition of “good faith” in Section 2(h) of the Limitation Act to submit that the School was always conscious of the fact that the Defendant had taken an objection as to the Plaintiff’s locus to institute the suit as it was not a legal entity which had ownership of the premises in question. He submits that the written statement was filed in the initial stage of the suit itself and it has taken 20 years for the Plaintiff to seek amendment/impleadment of the Society, and hence the same cannot be said to be in good faith. It is further submitted by the ld. counsel for the Defendant that the suit was abated in April, 2001 for non-impleadment of legal heirs of the Defendant, and the abatement was only set aside in 2014. This shows that the Plaintiff has not been prosecuting the suit with due diligence as also with care and attention.

4. On the other hand, ld. counsel for the Plaintiff- School submits that the initial claim was between employer and employee as the employee’s services had been terminated. However, during pendency of the suit, the application under Order I Rule 10 CPC was filed in order to avoid any technical objections.

5. Ld. counsels for the parties have been heard. The Plaintiff/School, had initially titled the suit as a suit for possession filed by M/s Manav Bharti India International School through its Director – Mr. V.K. Pandey.

6. The question as to whether the Society is the owner, and whether it is a necessary and proper party is not even pressed or argued in the present petition. The only objection to the impugned order is in respect whether the benefit in the proviso to Section 21(1) of the Limitation Act should be given to the Plaintiff. The said provision reads as under:

“21. Effect of substituting or adding new plaintiff or defendant.—

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

7. The Trial Court has come to the conclusion that the mistake of the School was not to implead the Society which was running the School, and though the School was not a separately registered entity the Court has come to the conclusion that the filing of the suit through the General Secretary was sufficient, and it was at best a mistake in good faith by the School. It is not even in dispute that the Defendant was in fact working as a *mali* in the

School during the time when he was alive. While there is no doubt that the plaint is not properly structured and proper pleadings have not been made in the plaint, considering that the Plaintiff is a School and the structure which is in the occupation of the Defendant is claimed to be a School premises, the Court is not inclined to interfere in the impugned order. In view of these circumstances, the School having been the original Plaintiff, the non impleadment of the Society as Plaintiff No.2 could at best be an error or based on legal advice. The same could not be alleged to be bad faith on behalf of the Plaintiff/School. Under these circumstances, the benefit under the proviso to Section 21(1) extended to the School and to the Society is not liable to be withdrawn. The impugned order does not want any interference.

8. Considering that the suit is of 1996 vintage, and the Plaintiff being a School, it is directed that the suit shall be disposed of within one year from today.

9. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 14, 2019

Rahul