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

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Judgment delivered on: 17.12.2020

+ CM(M) 479/2020

JAIKISHAN AGGARWAL (BLIND) Petitioner

versus

JINENDER KUMAR & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Gagan Mathur, Advocate.

For the Respondents: Mr. Samrat Nigam with Mr. Amit Punj, Advocates for respondent No.1.
Mr. Akhil Mittal, Standing Counsel for respondent No.2.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM(M) 479/2020 & CM APPL.24407/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 16.03.2020, whereby, application of the petitioner under Order 1 Rule 10 CPC seeking impleadment in the suit filed by the respondent No.1 has been dismissed.

3. Respondent No.1 had filed the subject suit against respondent No.2/Corporation for permanent and mandatory injunction seeking permanent injunction against respondent No.2 thereby restraining respondent No.2, its officials from interfering or creating hindrances in the opening of the second door in the shop of the respondent No.1 on the southern side of the shop. Alternatively, it is prayed that since other shopkeepers have opened similar second gate/doors in their shops, a direction be issued to the respondent No.2 to close the second or third door/gate of other shopkeepers.

4. Respondent No.1 is an owner of a shop in new Lajpat Rai Market. It is contended that earlier respondent No.1 was a lessee, subsequently, on execution of a conveyance deed dated 08.07.2005, he has become the owner of his shop. The shop has an opening on the west side and on the southern side there is a window. On the southern side also at a distance of 6 feet there is a kiosk which is allotted under the Tehbazari Scheme to the petitioner/applicant.

5. Subject application was filed by the petitioner under Order 1 Rule 10 CPC contending that in case any opening was permitted on the southern wall of respondent No.1's shop, it would affect and disturb the petitioner's easementary rights to his kiosk and would also affect his right of privacy.

6. It is contended in the application that the respondent No.1 had earlier file a suit seeking a restraint on the Corporation from stopping

him from putting an iron shutter on the southern wall. It is submitted that the suit was initially dismissed. However, it was subsequently allowed partly in the appeal and respondent No.1 was granted a right to put up a shutter on the window without disturbing the structure of the shop and also making it clear that the window would not be converted into a door at any stage and the window would also be not made a regular business opening.

7. It is contended that the relief claimed in the present suit would directly affect the rights of the petitioner pertaining to the kiosk allotted to him and as such the presence of the petitioner is necessary before the Court.

8. Subject application was dismissed by the Trial Court holding that the suit has been filed by the respondent No.1 against respondent No.2 and relief, if any, would be granted as per the Rules and regulations of the Municipal Corporation of Delhi and that there was no dispute between the petitioner and the respondent No.1 and there was merely an apprehension that if relief claimed is allowed, it would affect his easementary rights and merely on an apprehension impleadment could not be allowed. The Trial Court has come to a conclusion that the petitioner is neither a necessary nor a proper party to the suit.

9. Learned counsel for the petitioner contends that various photographs placed on record depict that the respondent No.1 places

his articles for display much beyond the area of a shop on the public pavement as well as the street. It is contended that if opening on the southern side was permitted, the passage between the shop of the respondent No.1 and the kiosk allotted to the petitioner, which is only 6 feet, would be encroached upon by the respondent No.1 thereby directly affecting the easementary rights of the petitioner as also invade on the privacy of the petitioner as there is an opening on the kiosk of the petitioner from that side.

10. Learned counsel for the respondent No.1 submits that in the earlier suit filed by the respondent No.1, petitioner had filed a similar application under Order 1 Rule 10 CPC seeking impleadment. Said application was dismissed. Even the appeal filed by the petitioner impugning the dismissal of his application under Order I Rule 10 CPC was rejected by the High Court and also by the Supreme Court in a special leave petition filed by the petitioner.

11. Learned counsel for the respondent No.1 submits that the said order would operate as res judicata inasmuch as the right of the petitioner to intervene in the subject suit is concerned.

12. Further, it is contended by learned counsel for the respondent that the dispute is purely between the respondent No.1 and the Corporation respondent No.2 and the right that respondent No.1 is claiming, is under the bylaws of the Corporation and petitioner is,

accordingly, neither a necessary nor a property party for adjudication of the said rights.

13. The fulcrum of the arguments of the learned counsel for the respondent No.1 is that in the earlier suit filed by the respondent No.1, petitioner had sought to intervene and his application was dismissed holding that he was neither a necessary nor a property party and said dismissal has been upheld up to the Supreme Court.

14. The plaint of both the suits has been placed on record. Perusal of the Plaint of the earlier suit filed by the respondent No.1 shows that respondent No.1 at that stage was seeking to place an iron shutter on the window which already existed on the southern side. Respondent No.1 was not at that stage seeking to open a door or a business opening to his shop. Since respondent No.1 was only seeking to place an iron shutter on the side of his shop on an opening which was already existing, said relief in the first suit is clearly distinct and different from the relief sought in the second suit, which is the present suit. In the present suit, respondent No.1 seeks to open a door as well as give access to his shop from the side which faces the kiosk of the petitioner.

15. Photographs placed on record clearly show that the distance between the southern wall of the shop of the respondent No.1 as well as the kiosk is only about 6 feet. Photographs of the shops of that area depict that virtually all shopkeepers keep their articles for display

outside their shops on the pavement and public street and in some cases even beyond 6 feet.

16. In case respondent No.1 was to make an opening and keep his articles outside the shop, it would certainly impinge upon the passage between the shop of the respondent No.1 as well as the kiosk of the petitioner. In that view, it cannot be said that the rights of the petitioner would be completely unaffected if an opening were to be opened on the southern wall of the shop of the respondent No.1.

17. The argument of learned counsel for the respondent No.1 that the application would be barred by the principle of res judicata is not sustainable in view of the fact that the relief sought in the first suit that the relief being sought by the respondent No.1 in the second suit is clearly distinct from the relief sought in the first suit. In the first suit the respondent No.1 was merely seeking to place an iron shutter over the window which already existed. From the said window there was no access available to any individual into the shop but now respondent No.1 seeks to open a business entry towards his shop from which customers could also enter which would have bearing on the rights of the petitioner. So it cannot be said that petitioner is neither a necessary nor a proper party to the present proceedings.

18. The other argument of learned counsel for respondent No.1 that the *lis* is purely between the respondent No.1 and the respondent No.2 and is to be decided solely on the basis of the rights that the

respondent No.1 derives under the Municipal bylaws also does not further the case of the respondent No.1 inasmuch as even if one were to say that the petitioner is not necessary party, it cannot be said that the petitioner is not even a proper party to be joined in the proceedings, who should be heard while granting any relief to Respondent No. 1/Plaintiff.

19. A person may be joined as a party to the proceedings in case his presence is necessary for completely and finally adjudicating all disputes or in case the rights of the individual are likely to be affected by a final decision in the suit. Whether petitioner is able to contribute to the adjudication of the suit is not the only consideration. But it cannot be said that the rights of the petitioner would be completely unaffected by the opening of the door on his side and as such the finding returned by the Trial Court that he is neither a necessary nor a proper party cannot be sustained.

20. In view of the above, the impugned order is set aside. Petitioner is impleaded to the suit as a defendant.

21. Copy of the Suit paper book be furnished by the respondent No.1 to the petitioner within one week.

22. Petitioner shall file his written statement before the Trial Court in accordance with law within the statutory period on supply of the paper book by the respondent No.1.

23. It is clarified that this Court has neither considered nor expressed any opinion on the merits of the contentions of either party and the factual observations contained herein are only for the purpose of disposal of the application for impleadment filed by the petitioner and would have no bearing on the merits of the disputes between the parties.

24. Petition is, accordingly, allowed in the above terms.

25. Copy of the judgment be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

DECEMBER 17, 2020
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SANJEEV SACHDEVA, J

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