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

\+ **CM(M) 542/2017**

SARVESH CHAND GUPTA ..... Petitioner

Through: Mr. P.K. Rawal, Mr. Rishabh Sharma & Mr. Tarun Agarwal, Advocates (M-9810008623)

versus

M/S NATHU SWEETS & ORS ..... Respondent

Through: Mr. Sunil Mittal, Senior Advocate with Ms. Seema Seth, Advocates (M-9810602729)

AND

\+ **CM(M) 1022/2017**

NATHU SWEETS & ANR ..... Petitioner

Through: Mr. R.K. Saini, Ms. Bhavana Jain, Mr. Inderjeet & Mr. Ankit Singh, Advocates (M-9350255162)

versus

SARVESH CHAND GUPTA &ORS ..... Respondents

Through: Mr. P.K. Rawal, Mr. Rishabh Sharma & Mr. Tarun Agarwal, Advocates

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **10.02.2020**

<u>CM APPL. 24109/2019 (u/O XXII Rule 2 CPC) in CM(M) 542/2017</u>

1. The present application seeks impleadment of the legal heirs of late Mr. Sarvesh Chand Gupta who passed away on 30th March, 2019. Mr. P.K. Rawal, ld. counsel submits that these are three legal heirs of the deceased.

He is stated to have been survived by his wife and two married daughters, and no other legal heirs. Accordingly, the application is allowed. The amended memo of parties is taken on record. It is made clear that this Court had not given any opinion on the merits of the disputes, as to who inherits the estate of late Mr. Sarvesh Chand Gupta.

CM(M) 542/2017 & CM APPL. 18412/2017 (stay)

2. The present petition challenges the impugned order dated 19th April, 2016 by which the application under Order VI Rule 17 CPC filed by the Plaintiff has been dismissed. The Plaintiff – Mr. Sarvesh Chand Gupta filed a suit seeking permanent injunction against the Defendants, who are the partners of M/s Nathu Sweets in Bengali Market as also the Nr.DMC. The reliefs sought in the suit are as under:

> *"Pass a decree of permanent injunction in favour of the plaintiff and against the defendant no. 1 to 4 thereby restraining the defendant no. 1 to 4 their agents, servants, employees, heirs, successors and assignees etc. etc. from running the illegal business of selling sweets, eatable items and running the restaurant form the demise premises i.e. Shop No. 23, 24 and 25 and Qr. No. 62 and 63, Bengali Mal Market, New Delhi which is specially shown in the site plan and be further pleased to restrain the defendant no. 5 from issuing any license for running the said illegal business of selling sweets, eatable items and running restaurant from the demise premises as mentioned above till the unauthorized and illegal construction has not been removed by the defendant no. 1 to 4."*

3. The trial in the suit had commenced, and the Plaintiff had already commenced the examination-in-chief. However, at that stage, the application under Order VI Rule 17 CPC came to be filed. The case of the Plaintiff in

the application is that during the pendency of the suit and in fact from the proceedings in the suit itself, certain new facts were revealed in respect of the licence given to the shops in Bengali Market. According to the Plaintiff, the said licence and the pleadings thereto are relevant in adjudicating the relief of injunction and thus amendments were sought relying upon the licence disclosed by the Defendants. Paragraphs 16(a) to 16(e) were thus sought to be added in the plaint.

4. The Trial Court has rejected the amendment on the ground that the trial had already commenced in the matter. The operative portion of the Trial Court's order reads as under:

> *"...*
> *10. All these facts as sought to be mentioned in proposed paras by way of amendments, could have been incorporated in the plaint prior to the commencement of trial. <u>It is not clear as to why such application for the amendment of the plaint has been made at such belated stage of trial when matter was listed for recording PE</u>. If all those facts as are sought to be incorporated in the plaint by amendment, are taken on the face of it without going into details, I find such facts could have easily been brought into plaint even at the time of institution of the suit or latest by the date of framing the issues. Moreover, these proposed facts are nothing but to explain the well stated case of the plaintiff that defendants have allegedly raised unauthorized construction and has misused the three shops and two residential quarters, in violation of lease deed. Thus, I do not find merits in the application, in view of the proviso to Rule 17 of Order 6 CPC and also for the reason that those facts are not necessary for the proper adjudication of the case. Hence, application stands dismissed."*

5. After hearing ld. counsels for the parties, it is clear that the amendment was moved in view of the documents including the licence which were disclosed by the Defendants during the pendency of the suit. Since the main issue is in respect of the licence for the running of the sweet shop, the amendments are considered relevant for the adjudication of the issues that arise in the suit. Accordingly, the amendment is allowed subject to payment of Rs.15,000/- as costs to the Defendants. The Court has not examined the merits of the amendments. All the defences and objections of the Defendants are kept open to be adjudicated at the final stage.

6. The Petition is disposed of in these terms. All pending applications also stand disposed of.

CM(M) 1022/2017

7. Mr. R.K. Saini, ld. counsel submits that in view of the application under Order XXII Rule 2 CPC being allowed in CM (M) 542/2017, the legal heirs of late Mr. Sarvesh Chand Gupta - be impleaded as Respondent Nos.1(a),1(b), &1(c) in this petition. Accordingly, it is directed that Ms. Savita Gupta, Ms, Anubha Sharma and Ms. Nidhi Aggarwal, who are the wife and two married daughters of the deceased, be impleaded. Let the Petitioner file an amended memo of parties in this matter.

8. This petition has been filed challenging the order dated 31st July, 2017 by which the Defendant's right to cross-examine the Plaintiff's witnesses has been closed. The observation of the Trial Court is that the AR of the Defendant No.1 behaved in an arrogant and casual manner and did not conduct the cross examination.

9. Considering that in CM(M) 542/2017, the Plaintiff has been today permitted to amend its plaint, it is directed that the amended written

statement shall now be filed by the Defendants within a period of two weeks from today.

10. Let the amended plaint be brought on record within ten days. Written statement shall be filed by the Defendants within two weeks thereafter. The Trial Court shall consider if any additional issue needs to be framed. Thereafter, the trial in the suit shall continue. The amended written statement is being permitted to be filed subject to payment of costs of Rs.15,000/- as costs, in view of the conduct of the Defendants before the trial court.

11. Since the suit is of 2007, the Trial Court shall endeavour to conclude the trial and adjudication of the suit within a period of one year.

12. Accordingly, the impugned order is set aside. Petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 10, 2020

Rahul/dj