

\$~21

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

%

Judgment delivered on: 13.03.2020

+ CM(M) 1173/2018 and CM APPL. 40155/2018 (Stay)

MONICA KWATRA

..... Petitioner

versus

AMARJEET SINGH GULATI

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Kamlesh Mahajan, Advocate

For the Respondents : Ms. Trina Banerjee, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 40156/2018 (Exemption)

Exemption is allowed, subject to all just exceptions.

CM(M) 1173/2018

1. Petitioner impugns order dated 13.09.2018, whereby the Executing Court has treated an application filed by the respondent under Section 152 Civil Procedure Code (CPC for short) as an application under Order 6 Rule 17 CPC and permitted amendment of the memo of parties of the original Suit and also issued fresh warrants

of attachment as per the amended memo of parties.

2. Subject Suit was filed by the respondent for recovery against the defendant, named as *Smt. Mona Kwatra wife of late Sh. Ramesh Kwatra proprietor of M/s Ramesh Trading Co. at 11, Narain Market Sadar Bazar, Delhi - 110006.*

3. Since, as per the Trial Court, none appeared after the service of summons, defendant was proceeded *ex parte* and *ex parte* decree was passed on 07.04.2017.

4. Subject Execution Petition was filed by the respondent/decreed holder against the defendant in the Suit i.e. *Smt. Mona Kwatra*. Warrants of attachments were issued for attachment of the assets of *Smt. Mona Kwatra wife of late Sh. Ramesh Kwatra.*

5. Objections were filed by the petitioner contending that petitioner is named *Monica Kwatra, wife of late Sh. Rakesh Kwatra* and warrants in the name of *Mona Kwatra wife Sh. Ramesh Kwatra* were sought to be executed against her. It was further contended that she was never served with the summons in the Suit as the summons were addressed in the wrong name and at the address of the shop of the husband of the petitioner, which shop was lying closed after the demise of the husband.

6. It is contended that the record of the Suit also showed that summons was not delivered to the petitioner but were received by one

Sh. Naresh Bhalla. It is submitted that the Trial Court believing the said service proceeded *ex parte* against the defendant in the Suit. It is submitted that the summons received by one Mr. Naresh Bhalla do not disclose as to who this person is. Neither the identity nor the address or contact details of Sh. Naresh Bhalla are available on the summons.

7. Faced with the objections raised by the petitioner that the name of defendant/ judgment debtor was *Smt. Mona Kwatra, wife of late Sh. Ramesh Kwatra* and not that of the petitioner *i.e. Smt. Monica Kwatra, wife of Rakesh Kwatra*, an application under Sections 151 and 152 CPC was filed by the respondent seeking amendment/ correction of the decree.

8. By the impugned order, the Executing Court has held that the correcting could not have been done under Section 152 CPC and accordingly treated the said application as an application under Order 6 Rule 17 CPC and amended the memo of parties of the original decree.

9. It is contended by the learned counsel for the petitioner that the petitioner has also filed an application under Order 9 Rule 13 CPC in the Suit. However, no final orders on the same have yet been passed by the Trial Court.

10. It is submitted by the learned counsel for the petitioner that the Executing Court had no power to amend the pleadings or the memo of parties of the Suit and said power, if at all, would lie with the Court

which passed the decree. She further submits that an application, under Order 6 Rule 17 CPC, would not lie after the Suit has been disposed of.

11. Order 6 Rule 17 CPC reads as under:

“Amendment of Pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

12. In terms of order 6 Rule 17 CPC, the Court at any stage of the proceedings, may allow either party to alter or amend the pleadings. Reading of Order 6 Rule 17 CPC clearly shows that such an application would lie when the proceedings are pending before the Court. The expression used is ‘*at any stage of the proceedings*’ which imply that such an application can be moved only when the proceedings are pending and not when the proceedings had been disposed of. However, an application for amendment can be filed even at the appellate stage as appeal is considered to be an extension of the original proceedings.

13. The ‘Court’ referred to in Order 6 Rule 17 CPC would imply the Court before which such proceedings are pending and not the Executing Court, which has only to execute the order. It is a settled position that an Executing Court cannot go behind the decree.

14. There may be cases where the original court that passed the decree is also the Executing Court. However in such a case the application would have to be filed in the original proceedings and not in the execution proceedings.

15. Section 152 CPC reads as under:

“152. Amendment of judgments, decrees or orders:

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

16. Section 152 CPC permits a Court to correct clerical, arithmetical mistakes in judgments, decrees or orders arising therein from the accidental slip or omission. However, such an application has to be moved before the same Court which had passed the judgment, decree or order and not before the Executing Court.

17. Reference may also be had to Section 153 CPC which empowers the Court to amend any defect or error in any proceeding in a Suit. Such an amendment can also be carried out only by the Court which passed the relevant decree or judgment.

18. Clearly, in view of the above, impugned order of the Executing Court, treating the application under Section 152 CPC filed by the respondent as an application under Order 6 Rule 17 CPC and thereafter, amending the memo of parties of the decree is not sustainable.

19. In view of the above, the impugned order dated 13.09.2018 is set aside. The Petition is allowed in the above terms.

20. Further, the Trial Court is directed to decide the application of the petitioner under Order 9 Rule 13 CPC prior to taking up the execution proceedings.

21. The original record, if available with the registry shall be transmitted back to the Trial Court forthwith.

22. Order *dasti* under signatures of the Court Master.

MARCH 13, 2020

PB

SANJEEV SACHDEVA, J