

\$~62

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1123/2022 & CM APPL. 45347/2022, CM APPL. 45348/2022

SMT SARITA RAVI Petitioner
Through: Mr. Lalit Bhardwaj, Mr. J.K. Verma, Mr. Jatin Anand Dwivedi and Mr. Rohan Rishi Bhatnagar, Advs.

versus

NISHA TANEJA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **17.11.2022**

1. This petition, under Article 227 of the Constitution of India, assails order dated 3rd January 2022 passed by the learned Civil Judge in CS 84960/2016 (*Nisha Taneja v. Sarita Ravi*). By the said order, the learned Civil Judge has dismissed two applications preferred by the defendant under Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. Though both applications were preferred under Section 151, the learned Civil Judge has treated them as applications under Order VI Rule 17 and Order XVIII Rule 17 of the CPC, inasmuch as the first application sought to amend the written statement and the second application sought permission to recall PW-1 for cross-examination.

3. Mr. Lalit Bhardwaj, learned Counsel for the petitioner, submits, at the very outset, that the second application under Order XVIII Rule

17 of the CPC would survive for consideration only if the first application under Order VI Rule 17, seeking amendment in the written statement, were to be allowed.

4. As such, the occasion for this Court to examine the impugned order qua the second application under Order XVIII Rule 17 of the CPC would arise only if the court were to find the impugned order to be vulnerable to challenge insofar as it rejects the petitioner's application under Order VI Rule 17 of the CPC.

5. For the purposes of the present order, it is not necessary to enter into the details of the controversy between the parties.

6. Suffice it to state, therefore, that, consequent to completion of pleadings, issues were framed in the suit by the learned Civil Judge on 8th March 2017, whereafter trial commenced. Recording of the evidence of the respondent, as the plaintiff in the suit, concluded on 17th August 2019. The matter was, thereafter, pending for recording of the evidence of the petitioner, as the defendant in the suit, when, on 5th April 2021, the application for amending the written statement was filed by the petitioner.

7. The necessity to amend the written statement, as per the application filed by the petitioner, was because the written statement, as originally filed, did not specifically traverse the assertions in the plaint. The petitioner, therefore, sought, by the amend, to introduce specific traversals to the factual and legal assertions in the plaint filed by the defendant. Clearly, therefore, the amendments were substantive, and not merely in the nature of formal or procedural

changes.

8. As the learned Civil Judge has correctly held, therefore, the application would have to be examined in the light of the proviso to Order VI Rule 17.

9. Order VI Rule 17 of the CPC reads thus:

“17. 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.”

10. As the application of the petitioner for amendment of the written statement was filed after commencement of trial, the petitioner was required, in the application, to show, positively, that the averment which was sought to be included by way of amendment could not be raised before commencement of trial despite due diligence. In other words, the petitioner would have to establish the existence of two ingredients, viz., that (i) there was exercise, by her, of due diligence, and (ii) despite such exercise of due diligence, the averments which were sought to be included by way of the amendment could not have been raised prior to commencement of trial. The occasion to establish the second ingredient would arise only if, in the first place, the first ingredient was found to exist.

11. For this, one needs to turn to the application filed by the

petitioner for amendment of the written statement, which may be reproduced, *in extenso*, thus:

“APPLICATION UNDER SECTION 151 CPC FOR AMENDMENT OF WRITTEN STATEMENT /PLEADING ON BEHALF OF DEFENDANT.

MOST RESPECTFULLY SHOWETH:

1. That the above said suit is pending adjudication before this Hon'ble court and is fixed for today.
2. That the defendant has engaged the undersigned Advocate to defend her case.
3. That on perusal of the written statement the undersigned counsel of the defendant has found that plain denial of the plaint has been made, no specific denial as per provisions of Civil Procedure Code has been done, proper pleadings to defend the defendant have remained untouched. It was done by previous counsel of the defendant.
4. That under the above circumstances the amendment of the written Statement is required filed earlier on behalf defendant is necessary to impart justice to her (defendant).
5. That in case the defendant is not allowed to amend her previous Written statement, she shall suffer irreparable loss and injury.
6. That the application moved by the defendant is bonafide and in the interest of justice.

PRAYER:

It is, therefore, most humbly prayed that the applicant/defendant may kindly be allowed to amend the Written Statement/pleadings in the interest of justice.”

12. A bare reading of the amendment application reveals that, leave alone pleading the existence of any due diligence, despite which the amendments which were proposed to be incorporated could not have been advanced prior to trial, the application does not even provide a cause for the amendments not having been earlier advanced. The application for amendment of the written statement does not even

explain why the averments which were now being sought to be incorporated could not have been earlier filed. Needless to say, there is no question of pleading, in the said application, either of the existence of any due diligence or of any inability to raise the said averments despite exercise of due diligence.

13. In such circumstances, the learned Civil Judge was perfectly justified in refusing to allow the amendment of the written statement as sought.

14. No occasion, therefore, arises for this Court to interfere with the impugned order in exercise of jurisdiction vested in it by Article 227 of the Constitution of India.

15. This petition is accordingly dismissed *in limine*.

16. Needless to say, this Court has not examined the merits of the case and no observation contained in the present order should influence the proceedings in the suit in any other regard.

C. HARI SHANKAR, J

NOVEMBER 17, 2022

dsn