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

% Judgment delivered on: 24.04.2023.

+ CM(M) 99/2022 & CM APPL. 5288/2022

NAEMUDDIN

..... Petitioner

versus

MOHD. NAVED YAR KHAN AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. A. C. Bhasin and Mr. Amit Bhasin,
Advocates

For the Respondent : Mr. Rizwan and Ms. Sachi Chopra,
Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 25.11.2021 in CS No. 97202/16 titled '*Mohd. Naved Yar Khan Vs. Shri Shahbuddin*' whereby the application under Order VI Rule 17, CPC, 1908 as well as application under Order VIII Rule 1A r/w Section 151 CPC, 1908 were dismissed on the ground that the documents as well as the amendment sought were highly belated, in that, almost 12 years had passed from the time cause of action had arisen to seek such reliefs.

2. Mr. Bhasin, learned counsel appearing for the petitioner submits

that out of the documents now sought to be filed, the Will dated 14.09.1977 executed by Mohammad Hakim Khan in favour of late defendant No.2 Mr. Shahbuddin was already referred to in the written statement filed by late Shahbuddin on 18.04.2006.

3. Learned counsel submits that having regard to the fact that the said document was already mentioned in the written statement and relied upon by late Shahbuddin, and now the successor in interest i.e. the petitioner/defendant No.3, who is the son of Late Shahbuddin, there was no way the learned Trial Court could have deprived the petitioner/defendant No.3 from the right to file such documents despite passage of so many years.

4. Mr. Bhasin, learned counsel submits that the substratum of the defence of the respondent/plaintiff is based entirely on the Will and the interse disputes of the parties, would be decided on the authenticity and the veracity of the aforesaid Will.

5. On that basis, Mr. Bhasin submits that the Will ought to have been permitted to be placed on record. Learned counsel also submits that the opposite party could have been compensated by way of costs for such indulgence.

6. Learned counsel submits that the application under Order VI Rule 17 CPC, 1908 was necessitated on account of the fact that in para 19 of the written statement, where a reference to the aforesaid Will was made, erroneously the statement that the Will was bequeathed in favour of the wife of Late Shahbuddin was mentioned, in place of Late Shahbuddin himself.

7. Mr. Bhasin submits that it would be in accordance with law in

case the Will is permitted to be placed on record, simultaneously with the permission to also amend written statement to that effect.

8. Learned counsel submits that though the said application was filed after the commencement of the trial, so far as the application under Order VI Rule 17 CPC, 1908 is concerned, keeping in view the fact that the documents are relevant, the averments thereto also need to be amended accordingly.

9. *Per contra*, Mr. Rizwan, learned counsel appearing for the respondent No.1/plaintiff vehemently opposes the submissions made by Mr. Bhasin.

10. Learned counsel appearing for the respondent No.1 submits that admittedly, the period of 12 years have elapsed as rightly observed by the learned Trial Court in preferring the application Order VIII Rule 1A CPC, 1908 as well as application under Order VI Rule 17 CPC, 1908.

11. Learned counsel submits that keeping in view the submissions made by Mr. Bhasin with respect to the petitioner/defendant No.3 adopting the written statement of the late Shahbuddin stated to have been filed on 18.04.2006, recorded vide the order dated 13.09.2011, the admission of the averments contained in the aforesaid written statement would deemed to have been in the knowledge of the petitioner.

12. Learned counsel submits having regard to the above fact, there is no way that the petitioner can be permitted to place on record any document after the passage of 12 years.

13. Learned counsel also submits that the story as to how the petitioner came in possession of the Will and other documents is also unreliable for the reason that the old box that is referred to by the

petitioner and supposed to have been placed in the suit property, was lastly constructed by defendant No.2 who is in possession of the suit property.

14. Learned counsel also submits that the application under Order VI Rule 17 CPC, 1908 is mischievous and vexatious and ought not to be allowed at all.

15. Learned counsel submits that knowing fully well the stand taken by late Shahbuddin in his written statement, having adopted the same way back on 13.09.2011, the present application seeking to change the nature of the defence itself would be prejudicial to the interest of the respondent No.1/plaintiff.

16. On that basis, learned counsel submits that there is no error committed by the learned Trial Court.

17. Learned counsel also submits that even otherwise, the petitioner cannot be granted opportunity to file any such document since the petitioner/defendant's evidence is already closed vide the order dated 20.09.2019, which has not been challenged by him. On that basis, learned counsel submits that the present petition should be dismissed with heavy cost.

18. In rebuttal, Mr. Bhasin disputes the same and submits that the closure of the petitioner/defendant's evidence was challenged.

19. Be that as it may, this Court has considered the rival submissions as also the document placed on record and in particular, the written statement filed by late Shahbuddin on 18.04.2006.

20. So far as the application under Order VI Rule 17 CPC, 1908 is concerned, the proviso appended to Rule 17 categorically bars any

amendment to the pleadings after the trial had commenced. Though the proviso to Rule 17 permits such application, however, the Supreme Court by way of the judgment in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another* reported in **2022 SCC OnLine SC 1128** has categorically laid guidelines as to on what basis such amendment should be permitted. However, the same would be applicable to the facts of each case and cannot be treated as a law which shall be applied to the cases across the board.

21. Keeping in view the aforesaid, this Court has to consider as to whether the delay which has occasioned has any reasonable explanation to it.

22. This Court has taken into consideration the fact that the present petitioner had adopted the written statement dated 18.04.2006 filed by late Shahbuddin, on 13.09.2011 as noted vide the order of the said date by the learned Trial Court. Having regard thereto, it is to be deemed that the petitioner was aware of the averments made in the said written statement.

23. Having regard thereto, the petitioner cannot be permitted to wriggle out of the statements contained in the said written statement, that too with respect to the bequeath stated to have been made in the alleged Will. There has been no explanation as to why the amendment of the said written statement is being sought so late in the day. In that, the written statement was adopted in the year 2011 and the amendment thereof has been sought in the year 2019, after a passage of such a long time. Keeping in view the fact that the evidence of the respondent/plaintiff is already concluded, it would be travesty of justice

to permit the petitioner/defendant No.3 and now delay the entire trial proceedings.

24. In that view of the matter, so far as the application under Order VI Rule 17 CPC is concerned, the same is dismissed on the grounds of inordinate delay and laches and for lack of cogent reasons.

25. So far as the application under Order VIII Rule 1A CPC is concerned, since the purported Will, sought to be placed on record now, finds mention in the original written statement of late Shahbuddin dated 18.04.2006, this Court is of the considered opinion that the petitioner can be permitted to place the same on record subject, however, to the same being proved in accordance with law. The apprehension of the respondent/plaintiff so far as this document is concerned, can be suitably taken care of by permitting the respondent/plaintiff to take all and any objections, legal or otherwise, so far as this document is concerned, in relation to its mode, proof or relevancy in the trial.

26. In view of the above, the impugned order is partly set aside only in respect of the Will dated 14.09.1977 stated to have been executed by Mohd. Hakim Khan to be placed on record barring the petitioner/defendant No.3 from placing on record any document other than the Will. Of course, the same would be subject to proof. The aforesaid permission is being granted subject to costs of Rs.20,000/- to be paid by the petitioner/defendant No.3 to the respondent/plaintiff within two weeks from today.

27. It is directed that the learned Trial Court take on record the Will dated 14.09.1977, subject to proof. The objections, if any, of the

respondent/plaintiff may be considered by the learned Trial Court as and when raised.

28. In view of the aforesaid directions, the petition is disposed of.

TUSHAR RAO GEDELA, J .

APRIL 24, 2023/ms

