

\$~1

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

% Judgment delivered on: 14.03.2023

+ CM(M) 1576/2019 & CM APPL. 47591/2019

TARUN SHARMA

..... Petitioner

versus

ALI ZULFIKAR AHMED & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. K.K. Sharma, Senior Advocate
with Mr. Bhanita Potawary, Advocate.

For the Respondents : Respondent No.1-in-person..

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. With the consent of parties, the present petition is taken up for final disposal.
2. Petitioner, who is the defendant before the learned Trial Court challenges the order dated 11.10.2019 in CS No. 10865/16 titled as "*Ali Zulfikar Ahmed vs. Tarun Sharma And Another*", whereby the learned Trial Court has allowed the application under order VI Rule 17 of the CPC, 1908.
3. Mr. K.K. Sharma, learned Senior Counsel appearing for the petitioner/ defendant submits that the first objection against the said

application seeking amendment of the plaint is, that the proviso to Order VI Rule 17 prohibits any amendment to the pleadings after the trial commences unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the same matter before such commencement. On that basis, Mr. Sharma, learned Senior Counsel submits that the plain reading of the amendment application shows that the respondent/ plaintiff had already mentioned the relevant facts in the suit which has already been taken note of by the learned Trial Court in the impugned order and the application was unnecessary.

4. Learned Senior Counsel also submits that the only reason for seeking amendment was to ensure that the Trial Court gets biased against the petitioner/ defendant in relation to the allegations in FIRs and other allegations contained in the amendment application.

5. Learned Senior Counsel submits that the allegation that there was an FIR and a missing person report lodged in regard to the petitioner/ defendant is concerned, the same is already a part of the original plaint and in any case has no relevance with the suit or the prayers contained therein.

6. Learned Senior Counsel submits that the respondent/ plaintiff has not been able to demonstrate as to why and how the amendment sought are imperative to be included in the plaint, so far as the relief is concerned or even the issues as framed.

7. Learned Senior counsel submits that the impugned order ought to be interfered with and set aside being procedurally unsustainable and contrary to the provisions of Order VI Rule 17 of the CPC, 1908.

8. Learned Senior Counsel invited the attention of this Court to page

46 of the present petition, which is the order dated 02.01.2017, wherein issues were framed, to submit that no issue on the aspect of what has been stated now in the amended plaint forms part of the issues as framed and, therefore, the respondent/ plaintiff has also failed miserably in demonstrating how the amendments are relatable to any of those issues.

9. Per contra, Mr. Ali Zulfikar Ahmed- Respondent No.1/ plaintiff, appears in person before this Court and submits that as per the list of witnesses filed on behalf of the plaintiff, which is at page 51 of the paper book, the summoned witness at serial Nos.3 and 4 after having appeared as witnesses on behalf of the respondent/ plaintiff, divulged certain information which was directly in relation to the allegations made by the plaintiff against the defendant.

10. The case of the respondent/ plaintiff is that the plaintiff and the defendant No.1 were friends and in order to enable defendant No.1 to take loan from defendant No.2, the respondent/ plaintiff stood as a guarantor.

11. Respondent No.1 submits that on subsequent demand by defendant No.2 of the loan as extended by him, it was the respondent/ plaintiff who ended up discharging the liability. Respondent No.1 also submits that in order to avoid the re-payment of loan, availed of by petitioner/ defendant No.1, the relative of petitioner had lodged a false missing person complaint at P.S. Barakhamba Road, New Delhi on 09.08.2012.

12. Respondent No.1 further submits that it is only in respect of the information which was revealed by the witnesses from GIC Housing Finance Limited as also from the information revealed by the concerned

witness from P.S. Barakhamba Road, New Delhi that the necessity of amending the plaint arose. Accordingly, the application under Order VI Rule 17 was filed before the learned Trial Court, whereon the impugned order was passed.

13. Respondent No.1 submits that the learned Trial Court had taken into consideration the fact that though the basic allegations about the missing persons report and another relatable allegations were indeed contained in the plaint, however, for further clarification and explanation of the same, the learned Trial Court had considered the application and permitted such amendment to be carry out by way of the amended plaint.

14. Respondent No.1 in person also submits that the impugned order had carefully considered the fact that the proposed amendments would not change the nature of the suit and would also not prejudice the case of the petitioner/ defendant No.1

15. Respondent No.1 submits that there is no judicial impropriety or procedural irregularity committed by the learned Trial Court while allowing the impugned order and the impugned order is sustainable.

16. This Court has considered the submissions made by Mr. Sharma, learned Senior Counsel for the petitioner as well as by respondent No.1 and perused the impugned order as well as the related documents and pleadings on record.

17. At the outset, this Court has examined the application under Order VI Rule 17 of the CPC, 1908 which has been filed by the respondent/ plaintiff.

18. On a close examination, it comes to fore that the respondent has

made certain averments regarding the required amendments to be made in the plaint, though no discernible or clear paragraphs specifying the amended paragraphs sought to be inserted in the plaint has been delineated in the said application.

19. The application appears to be a generic application without specifying exactly as to what is sought to be inserted and amended in the original plaint. The learned Trial Court has also not considered this very important and procedural requirement in law and has passed the impugned order.

20. That apart, this Court is of the opinion that the petitioner can and ought to be provided an opportunity to file a fresh application under Order VI Rule 17 CPC 1908 specifying clearly the intended amended paragraphs so as to enable the petitioner/ defendant No.1 to meet the said pleadings specifically and object to the same in accordance with law.

21. In view of the aforesaid observation of this Court, this Court deems it fit to set aside the impugned order dated 11.10.2019 giving liberty to the respondent/ plaintiff to file a better application under Order VI Rule 17 of the CPC, 1908 within a period of fifteen days from today.

22. The learned Trial Court is requested to consider and also to take up the application at the earliest and dispose of the same after providing opportunity to the petitioner/ defendant No.1 to object to the same in accordance with law. In any case, the Trial Court shall endeavor to dispose of the applications, if any, filed by the respondent/ plaintiff within two months from today.

23. It shall be open to the petitioner/ defendant to raise all and any

objections including that of the relevancy of the averments sought to be carried out.

24. The rights and contentions of both the parties *qua* the said application, if filed, shall remain open.

25. The petition is disposed of in view of the above terms. The pending application stands disposed of.

TUSHAR RAO GEDELA, J.

MARCH 14, 2023/nd

