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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 5th July, 2023

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C.R.P. 48/2022

RACHNA MEDIRATTA AND ORS. Petitioners

Through: Mr. Praveen Suri, Ms. Kajal Kadam and Ms. Pooja Dhingra, Advocates.

versus

GIRDHARI LAL AND ANR. Respondents

Through: Mr. Dinesh Garg, Advocate for R-1.

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CM(M) 280/2022

RACHNA MEDIRATTA AND ORS Petitioners

Through: Mr. Praveen Suri, Ms. Kajal Kadam and Ms. Pooja Dhingra, Advocates.

versus

GIRDHARI LAL AND ANR. Respondents

Through: Mr. Dinesh Garg, Advocate for R-1.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.****CM(M) 280/2022 & C.M. APPL. 26150/2022****C.R.P. 48/2022 & C.M. APPL. 17201/2022 (Stay) 26140/2022 (early disposal)**

1. CM(M) 280/2022 has been filed by the Petitioners laying a challenge to an order dated 24.02.2022 passed by the Trial Court in Civil Suit No.626/2019 titled '*Girdhari Lal Tolani v. Ashok Kumar and Others*' whereby two applications filed by Respondent No.1/Sh.

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Girdhari Lal herein have been allowed, one under Order I Rule 10 CPC and the other under Order VI Rule 17 CPC. C.R.P. 48/2022 has been filed by the Petitioners assailing order dated 23.03.2022 whereby application filed by the Petitioners under Order VI Rule 18 CPC has been dismissed by the Trial Court. Petitioners herein are newly added Defendants before the Trial Court while Respondent No.1 is the Plaintiff and for the ease of reference, parties hereinafter are referred to by their litigating status before this Court.

2. By an order dated 13.04.2022, both petitions were clubbed and directed to be heard together. Be it noted that on 30.03.2022, this Court in CM(M) 280/2022 had rejected the request of the Petitioners to stay the Trial Court proceedings but directed that the same shall be subject to the outcome of these proceedings.

3. Facts to the extent necessary and taken from the petitions and/or documents on record are:

(A). Family of late Sh. Lila Ram comprised of three sons namely Sh. Kishan Chand, Sh. Hundal Das Tolani and Sh. Arjun Das and two daughters namely Smt. Kalawati and Smt. Kanta. Sh. Lila Ram was the owner of several immovable properties including property bearing Nos.38/1 and 38/2, Double Storey, Ramesh Nagar, New Delhi ('suit property');

(B). Respondent No.1 and his brother late Sh. Gul Kumar being the grandsons of Sh. Lila Ram and sons of late Sh. Arjun Das filed a suit in 1999 for declaration, partition and injunction against Sh. Ashok Kumar, Defendant No. 1/Respondent No.2 herein, who was the subsequent purchaser of suit property from Defendant No. 2/Sh. Kishan Chand as well as other legal heirs



of Sh. Lila Ram i.e. his two daughters, one son Sh. Kishan Chand and legal heirs of late Sh. Hundal Das Tolani. In the plaint, Respondent No. 1 had detailed the various properties owned by Sh. Lila Ram and also referred to a Will dated 12.04.1973 in respect of all his properties;

(C). It is averred in the plaint that Respondent No.1 and his brother Sh. Gul Kumar were in constructive possession of the suit property as the same was occupied by tenants, who were paying rent to them and earlier thereto to their father. It is also averred that Respondent No. 1 has filed a separate suit for injunction against Sh. Kishan Chand, which is pending and in which Sh. Ashok Kumar produced some forged documents purportedly a family settlement amongst Sh. Lila Ram and his sons. It is from the stand of Sh. Ashok Kumar in the said suit that Respondent No. 1 learnt that Sh. Kishan Chand had sold the suit property to Sh. Ashok Kumar for a sum of Rs.5 lacs vide Agreement to Sell dated 21.05.1997. This Agreement according to Respondent No. 1 is null and void and conveys no right, title or interest in favour of Sh. Ashok Kumar;

(D). It is also averred that though Sh. Lila Ram had left a Will in respect of his immovable properties but Respondent No. 1 and his brother are ready to forego all their rights as per the Will, save and except, the suit property, which is a joint Hindu Family property of which no partition has taken place. It is also stated that all properties of Sh. Lila Ram have to be partitioned and Sh. Kishan Chand had no right to sell the suit property on the basis of an alleged family settlement earlier between Sh.



Lila Ram and his children. Sh. Kishan Chand has already got possession of the largest property of Sh. Lila Ram i.e. a cinema hall in Sehore (Madhya Pradesh) in addition to his share in agricultural land, flour mill and house. The eldest son of Sh. Lila Ram has also taken possession of properties to the exclusion of the Plaintiffs and therefore the lawful share of Respondent No. 1 and his brother must be given to them after partition of all properties left behind by Sh. Lila Ram;

(E). Upon receipt of summons, written statement was filed by Defendants No. 1, 2, 7 and 8. Defendants No. 3 to 5 adopted the written statement filed by Defendant No. 2. Sh. Kishan Chand expired in December, 2005 and his legal heirs were brought on record vide order dated 27.04.2006;

(F). An application dated 04.10.2007 under Order XXIII Rule 1 CPC was filed by Respondent No. 1 and Sh. Gul Kumar seeking a compromise decree stating that a settlement had been arrived at between the parties whereby all properties of Sh. Lila Ram were divided amongst the legal heirs in the manner stated therein and the suit property fell to the share of Respondent No. 1 and his brother. From the order-sheets placed on record, it appears that the application was not allowed as the Court was of the view that some of the properties were situated beyond its territorial jurisdiction;

(G). On 13.11.2008, Sh. Gul Kumar expired and since no steps were taken to substitute his legal heirs, the suit abated *qua* him. As per Respondent No. 1 since there was an oral settlement between the legal heirs of Sh. Lila Ram including Sh.



Gul Kumar, his legal heirs did not seek impleadment to prosecute the suit;

(H). Subsequent thereto, another application dated 04.02.2013 was filed by Respondent No. 1 under Order XXIII Rule 1 CPC seeking permission to give up his relief of partition in view of the settlement between the legal heirs of Sh. Lila Ram. An application was also filed under Order XI Rule 14 CPC seeking production of the alleged Agreement to Sell between Sh. Ashok Kumar and late Sh. Kishan Chand. Reply was filed by Sh. Kishan Chand to the application in which he brought out that he had already sold the suit property to Sh. U.R. Mehndiratta. Notice was issued by the Court on 22.05.2015 to Sh. U.R. Mehndiratta to produce the documents on the next date of hearing and by the same order application under Order XXIII Rule 1 CPC was allowed permitting Respondent No. 1 to abandon prayer clauses (a) and (c) of the suit in view of the settlement between the parties;

(I). An application dated 03.09.2016 was filed by Respondent No. 1 under Order I Rule 10 CPC to delete Sh. Gul Kumar and Defendants No. 2 to 8/legal heirs of Sh. Lila Ram from the array of parties and to implead Sh. U.R. Mehndiratta, M/s. Kamakshi Estates Pvt. Ltd., Smt. Sushma Mehndiratta and Sh. Sunny Khurana, the subsequent purchasers of the property. An application dated 03.09.2016 was also filed under Order VI Rule 17 CPC for amendment of the plaint in view of these developments;

(J). Separate applications both dated 05.08.2021 were filed



by Ms. Rachna Mehndiratta and Sh. Mehul Mehndiratta as well as Sh. Mridul Mehndiratta under Order I Rule 10 CPC read with Order XXII Rule 4 CPC seeking impleadment in the suit on the ground that they were *bona fide* purchasers of the suit property through registered Agreements to Sell/GPAs etc. The applications were allowed vide order dated 28.09.2021 and all the three were impleaded as Defendants in the suit. Review filed by Respondent No. 1 against the said order was dismissed on 24.11.2021.

(K). Thereafter, Respondent No. 1 filed an application under Order I Rule 10 CPC dated 03.12.2021 for deleting Sh. Gul Kumar as Plaintiff No. 2 and Defendants No. 2 to 8/legal heirs of Sh. Lila Ram and also to formally bring on record Ms. Rachna Mehndiratta, Sh. Mehul Mehndiratta and Sh. Mridul Mehndiratta who had been impleaded as Defendants and are Petitioners herein. By the impugned order, both applications filed by Respondent No. 1 were allowed and the Trial Court permitted the amended plaint to be filed;

(L). Respondent No. 1 filed the amended plaint dated 25.02.2022 on 26.02.2022. Thereafter, Petitioners filed an application dated 22.03.2022 under Order VI Rule 18 CPC on the ground that the amended plaint was not in accordance with the amendments that were permitted by the Trial Court and some amendments carried out were on Respondent No.1's own volition and outside the scope of the amendments allowed. It was also urged that vide order dated 24.02.2022, Respondent No.1 was allowed to file the amended plaint but as no period



was prescribed, the same was to be filed within 14 days but was not so filed within the stipulated timeframe. As according to the Petitioners, the amended plaint was not in accordance with law, they sought a direction to strike off the amended plaint from record and dismiss the suit. This application of the Petitioners was dismissed by the Trial Court vide order dated 23.03.2022, which is challenged separately in C.R.P. 48/2022.

4. **Contentions on behalf of the Petitioners in CM(M) 280/2022:**

(a). On the death of Sh. Gul Kumar, the brother of Respondent No.1, who was Plaintiff No.2 in the original suit, the whole suit abated as no application was filed for impleadment of his legal heirs, since one of the reliefs sought in the suit was for partition. In view of the fact that the suit stood abated, no order could have been passed by the Trial Court on the application filed by Respondent No.1 under Order VI Rule 17 CPC seeking amendment of the plaint, in view of the judgment of the Supreme Court in *Gurnam Singh (Dead) Through Legal Representatives and Others v. Gurbachan Kaur (Dead) By Legal Representatives*, 2017 SCC OnLine SC 511;

(b). Legal heirs or other family members could not have entered into any settlement with Respondent No.1 as their predecessors had already, by virtue of the stand taken in the written statement, admitted that the suit property stood sold to Sh. Ashok Kumar. The plea of settlement between other legal heirs of Sh. Lila Ram with Respondent No.1 amounted to withdrawal of this admission in the written statement, which is



impermissible in view of the law laid down by the Supreme Court in ***Ram Niranjana Kajaria v. Sheo Prakash Kajaria and Others, 2015 SCC OnLine SC 857;***

(c). The amendment sought was barred by law of limitation as well as Section 34 of the Specific Relief Act, 1963 since the family settlement dated 01.07.1974 and the other documents executed by legal heirs of Sh. Lila Ram in favour of Sh. Kishan Chand and the mutation were never challenged. Respondent No.1 and Sh. Gul Kumar were the legal heirs of Sh. Arjun Das, who was party to the earlier settlement and this is also acknowledged by the two daughters of Sh. Lila Ram. Special and General Power of Attorneys were issued by Sh. Hundal Das Tolani and Sh. Arjun Das along with their two sisters in favour of Sh. Kishan Chand for mutation in the records of L&DO and therefore under provision of Section 8 of Hindu Succession Act, 1956, property devolved on Class-I heirs and at that time Sh. Arjun Das was alive. Once their father did not challenge the partition in his lifetime, no claim can be made by Respondent No.1 and Sh. Gul Kumar to the property in question. In fact, Respondent No.1 and Sh. Gul Kumar never challenged or sought any declaration *qua* the family settlement dated 01.07.1974 or the execution of Power of Attorneys and/or mutation in favour of Sh. Kishan Chand as null and void. These documents created a cloud on the alleged title of Respondent No.1 and in view of the judgment of the Supreme Court in ***Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRS. and Others, 2008 SCC OnLine SC 550,*** it was imperative for



Respondent No.1 to have sought declaration under Section 34 of the Specific Relief Act, 1963. In *Khatri Hotels Private Limited and Another v. Union of India and Another, 2011 SCC OnLine SC 1236*, the Supreme Court has held that where the Plaintiff challenges a subsequent transaction but the earlier transaction has become barred by limitation in view of Articles 58 and 59 of Schedule I of Limitation Act, 1963, he cannot by clever drafting get over the bar of limitation.

(d). Respondent No.1 could not be permitted by the Trial Court to withdraw part of the reliefs claimed in the suit i.e. partition and change the whole nature of the suit by converting it to a declaratory suit. It is settled that amendments which are barred by law cannot be allowed. Reliance was placed on the judgment of the Supreme Court in *Revajeetu Builders and Developers v. Narayanaswamy and Sons and Others, 2009 SCC OnLine SC 1709* and of this Court in *Hitesh Bhardwaj v. Shiksha Bharti Educational Society, 2021 SCC OnLine Del 4125*. Respondent No.1 is trying to prosecute an infructuous and abated suit in the garb of amendment and the impugned order suffers from grave illegality.

(e). This Court under Article 227 of the Constitution of India has supervisory powers to set aside an order which is perverse and not based on any material evidence or has resulted in manifest injustice and/or where the Court below has exceeded its jurisdiction and authority as held by this Court in *Commerzbank Aktiengesellschaft v. State Bank of India and Others, 2020 SCC OnLine Del 1666*.



5. **Contentions raised on behalf of Respondent No.1 in CM(M) 280/2022:**

(a). Scope of this Court's supervisory jurisdiction under Article 227 of the Constitution of India is limited and it cannot act as an Appellate Court to correct every error of law or fact made by the Trial Court only because another view is a possible view. Interference is warranted only where the Trial Court exceeds the jurisdiction vested in it or fails to exercise the jurisdiction so vested. In the entire petition, Petitioners have failed to make out a case on either of the two thresholds and no error apparent on the face of the impugned order has been brought forth. The impugned order is well reasoned and passed after appreciation of facts and law.

(b). As evident from the impugned order, Trial Court has allowed amendments which were necessitated in view of subsequent events post the filing of the suit i.e. abandonment of the relief of partition in view of the settlement between the legal heirs and the stand of the Petitioners themselves that they had purchased the suit property in the interregnum. At the time of deciding the application under Order VI Rule 17 CPC, Trial Court was not expected to hold a mini trial and was required to confine itself to determine whether or not the proposed amendments were essential for effective adjudication of the real controversy between the parties and that the amendment sought did not change the nature, character and complexion of the suit as also that it did not cause prejudice to the opposite party by pleading a new case.

(c). The original suit was filed for partition, permanent



injunction and declaration of the agreement to sell in favour of Sh. Ashok Kumar as null and void since he was a subsequent purchaser of the suit property. The amendments sought included minor grammatical corrections, amendment to the averments on account of deletion of Sh. Gul Kumar and Defendants No.2 to 8 as well as impleadment of the Petitioners, who had lastly purchased the suit property as also upon giving up the relief of partition. The amendments were justified in view of these subsequent developments. Reliance was placed on the judgments in *M/s Estralla Rubber v. Dass Estate Pvt. Ltd., VI (2001) SLT 577 SC* and *Surya Dev Rai v. Ram Chander Rai & others, IV (2003) SLT 810 SC*.

6. **Contentions on behalf of the Petitioners in C.R.P. 48/2022:**

(a). Trial Court has failed to appreciate that Order VI Rule 18 CPC provides that if a party who obtains an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is limited then within 14 days from the date of the order, shall not be permitted to amend after the expiry of such limited time or of such 14 days, as the case may be, unless the time is extended by the Court. During the course of hearing on the application, Respondent No.1 himself admitted that some amendments in the amended plaint were not strictly as per the order dated 24.02.2022 but were incorporated to clarify certain positions and did not change the nature of the suit. Despite this admission, Trial Court granted further time to file the amended plaint, which was wholly illegal.



(b). Trial Court erred in appreciating that in view of provision of Order VI Rule 18 CPC, since the amended plaint was not filed as per the order allowing the amendment and considerable time had passed since the passing of the order as also that there was no application seeking extension of time by Respondent No.1, the amended plaint ought to have been struck off and the suit dismissed. Provision of Order VI Rule 18 CPC is mandatory and not directory.

(c). Although strictly speaking, the amended plaint was filed on 25.02.2022 but since the amendment was not in consonance with what was allowed, the amended plaint should have been treated as if there was no plaint in the eyes of law within the time permitted and there was no discretion with the Trial Court to have extended the time.

7. **Contentions raised on behalf of Respondent No.1 in C.R.P. 48/2022:**

(a). Present petition is not maintainable in view of the bar in proviso to Section 115 CPC as Petitioners have been unable to point as to which order passed by the Trial Court has finally decided an issue between the parties to the *lis*. The impugned order only grants further time to Respondent No.1 to file an amended plaint in consonance with the amendments allowed earlier and does not decide any issue finally between the parties.

(b). Trial Court has, in fact, observed that some of the amendments carried out viz. in paragraphs 1, 2, 6 and 9 as also in the last sentence in paragraph 2 were not in consonance with the order dated 24.02.2022 and has disallowed them. Rest of the amendments were found to be in order and therefore exercising



its discretion, Court granted further time to file the amended plaint, subject to cost of Rs.3,000/- to be paid to the Petitioners. Order VI Rule 18 CPC itself grants discretion to the Trial Court to extend the time to file an amended plaint where the party who has obtained an order for leave to amend, does not amend within the time limited for that purpose by the order or if no time is limited, then within 14 days from the date of the order. It has been held in many judgments that the period of 14 days is not mandatory looking at the language of the provision itself. The whole intent and purpose of the Petitioners is to somehow delay the adjudication of the suit by filing false and frivolous petitions in this Court assailing each and every order passed by the Trial Court.

8. I have heard the learned counsels for the parties and examined their rival contentions.

9. In CM(M) 280/2022, Petitioners have challenged the order dated 24.02.2022 passed by the Trial Court allowing the applications of Respondent No.1 under Order I Rule 10 CPC and Order VI Rule 17 CPC. Few facts which need a reiteration are that Respondent No.1 is the grandson of Late Sh. Lila Ram and he alongwith his brother Sh. Gul Kumar filed the suit in 1999, from which the present petition arises, seeking partition and declaration of the Agreement to Sell executed by Defendant No.2 in favour of Sh. Ashok Kumar as well as for permanent injunction. It is alleged by Respondent No.1 that a family Settlement took place between him and Sh. Gul Kumar on one side and *erstwhile* Defendants No.2 to 8 on the other side, pursuant to which, the suit property fell to the share of the Plaintiffs. It also



emerges from the reading of the pleadings and the various orders of the Trial Court that various developments took place during the pendency of the suit, whereby allegedly the suit property changed hands in view of Sh. Ashok Kumar selling the property to Sh. U.R. Mehndiratta and thereafter, Sh. U.R. Mehndiratta sold the property to M/s Kamakshi Estates Pvt. Ltd. Through various documents such as Agreement to Sell, GPA etc. the property was sold allegedly to Smt. Sushma Mehndiratta and Sh. Sunny Khurana. Smt. Sushma Mehndiratta in turn sold the ground floor of the suit property with roof rights to Ms. Rachna Mehndiratta and Sh. Sunny Khurana sold the first floor with roof rights to Sh. Mehul Mehndiratta and Sh. Mridul Mehndiratta, the Petitioners in the present petition.

10. Based on the alleged sale, Petitioners filed an application dated 05.08.2021 under Order XXII Rules 4 & 10 CPC and Order I Rule 10 CPC seeking impleadment in the suit on the ground that the suit property was no longer under the ownership of the Plaintiff and had been sold to the Petitioners and being *bonafide* purchasers they were necessary and proper parties as the outcome of the suit will effect their rights and title to the property for which they had paid consideration. Application was allowed by the Trial Court vide its order dated 28.09.2021. Review application was filed by Respondent No.1 for recall of the order dated 28.09.2021, however, the same was dismissed by the Trial Court vide its order dated 24.11.2021.

11. In the wake of the various developments that took place including the death of Sh. Gul Kumar, Plaintiff No.2 in the suit, alleged family Settlement between the legal heirs of late Sh. Lila Ram, the Plaintiff giving up its relief of partition of various properties of his



grandfather including the suit property and the alleged sale of the suit property to subsequent purchasers as well as the impleadment of the Petitioners, Respondent No.1 filed two applications under Order I Rule 10 and Order VI Rule 17 CPC both dated 03.12.2021.

12. By the first application, deletion of the names of Plaintiff No.2/ Sh. Gul Kumar and Defendants No.2 to 8 was sought. A formal order was sought for adding the names of the Petitioners in the memo of parties as they already stood impleaded vide order dated 28.09.2021. By the amendment application, Respondent No.1 sought to place on record subsequent developments after the filing of the suit including amendment in some paragraphs of the plaint necessitated on account of the subsequent developments. Additionally, Respondent No.1 also sought amendment in the relief clause to delete relief (b) i.e. decree of partition and to add prayers for declaration of the documents executed by Sh. Ashok Kumar with respect to the suit property in favour of the Petitioners as also for permanent injunction against the newly added Defendants restraining them from creating third-party rights in the suit property.

13. The Trial Court allowed the amendment application on the grounds : (a) Plaintiff was stated to be in constructive possession of the suit property as he was receiving rent from the tenants occupying the property; (b) Defendant No.2 had allegedly sold the property to Sh. Ashok Kumar and the Agreement to Sell was under challenge by seeking a decree of declaration; (c) Respondent No.1 had entered into a Settlement with the legal heirs of late Sh. Lila Ram, which was brought on record by an application under Order XXIII Rule 1 CPC *albeit* the same was not allowed and in this view, relief of partition



was given up and application to permit him to do so was allowed earlier vide its order dated 22.05.2015; (d) perusal of the record reveals that there was nothing to show that the Defendants, who were legal heirs of late Sh. Lila Ram had ever disputed the factum of compromise entered into between them and the original Plaintiffs in the suit; (e) Plaintiff No.2/ Sh. Gul Kumar had expired during the pendency of the suit and none of his legal heirs had come forward to contest the suit; (f) relief of declaration sought by Respondent No.1 was distinct from the suit for partition and therefore, the suit continued to be maintainable in the absence of the said relief; (g) arguments of the Petitioners that there was no compromise between the legal heirs of late Sh. Lila Ram and thus, no ownership was vested in Respondent No.1 as also that Respondent No.1 never challenged the leasehold rights granted to original Defendant No.2 will be a matter of trial; and (h) the proposed amendments have been necessitated on account of the subsequent purchaser being impleaded in the suit and are necessary for determining the real question in controversy between the parties and for avoiding multiplicity of the suits.

14. Before examining the impugned order on merits, it is relevant and important to look at the law that is evolved over the years for deciding an application under Order VI Rule 17 CPC. It is consistently held by the Supreme Court that purpose and object of Order VI Rule 17 CPC is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. Power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice *albeit* amendment cannot be claimed as a matter of right. Courts should not adopt hyper-technical



approach and a liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law should not be permitted to hamper the Courts in administration of justice. Amendments are allowed to avoid uncalled multiplicity of litigations. [**Ref.: *B.K. Narayana Pillai v. Parameswaran Pillai and Another, (2000) 1 SCC 712***].

15. It is equally settled that if a Plaintiff seeks to alter the cause of action itself and introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to substitution of the plaint, Court will refuse to permit it if it amounts to depriving the Defendants of any right which may have accrued in their favour due to lapse of time. [**Ref.: *M/s Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91***]

16. In *Revajeetu Builders and Developers (supra)*, the Supreme Court observed that the general principle is that Courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just for determining the real controversy and that the basic principles were articulated almost 125 years ago and are still considered to be correct statement of law. Reliance was placed by the Supreme Court on a leading English case in *Cropper v. Smith, (1884) 26 Ch D 700 (CA)*, wherein it was held as follows:

“... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such



amendment as a matter of favour or of grace. ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

17. Finally, the Supreme Court in ***Revajeetu Builders and Developers (supra)*** culled out the factors to be taken into consideration while dealing with applications for amendments and relevant passages are as follows :

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

18. Tested on the anvil of the aforementioned judgments, in my

Signature Not VerifiedView, the Trial Court has committed no error in allowing the



amendments. Respondent No.1 had clearly set up a case in the original plaint that he and his brother Sh. Gul Kumar were sons of late Sh. Arjun Dass and grandsons of late Sh. Lila Ram and inherited the properties including the suit property. Other legal heirs of late Sh. Lila Ram were initially impleaded, as relief of partition was sought. Defendant No.1/ Sh. Ashok Kumar was impleaded as an Agreement to Sell was executed by Defendant No.2 in his favour and the same was assailed seeking a relief of declaration to declare the agreement as null and void alongwith relief of permanent injunction against creating third-party rights in the suit property. Several developments took place during the pendency of the suit. Plaintiffs and Defendants No.2 to 8 allegedly compromised the matter and the suit property fell to the share of the Plaintiffs and an application was filed bringing on record the said facts including an averment that the legal heirs had taken their respective shares/monies under the family Settlement. Sh. Gul Kumar expired and his legal heirs did not contest. Defendants No.2 to 8 did not contest their deletion and finally, on this basis Respondent No.1 gave up the relief of partition. During the pendency of the suit, it came to light through the Defendants that the suit property was sold and the last set of purchasers impleaded themselves claiming right to the suit property. In this view, the Trial Court rightly permitted the amendments to bring on record the subsequent developments to decide the real controversy between the parties and avoid multiplicity of proceedings. In my view, it cannot be stated that by the amendments, Respondent No.1 sought to change the complexion of the suit and/or set up a new cause of action or raise pleas which were inconsistent with the pleas in the original suit. The relief of permanent injunction



was sought to be amended as the property allegedly came to the Petitioners and restraint orders were sought from creating third-party rights to preserve the suit property.

19. The order of the Trial Court impugned herein permitting the amendments taking into account subsequent events is completely justified and is supported by the settled law propounded by the Supreme Court. In fact, in a recent judgment in ***Hitesh Gola v. Royal Bank of Scotland and Others***, 2023 SCC OnLine Del 1271, this Court allowed an amendment application predicated on subsequent developments during the pendency of the suit, which were opposed by Defendant No.1 therein on the ground that Plaintiff was seeking to introduce fresh facts beyond the scope of the original suit and the amendments entirely changed the character and nature of the suit. The Court examined the contentions and came to a conclusion that Plaintiff cannot be expected to file multiple proceedings seeking adjudication of multiple claims arising out of the same incident and the amendments were necessary for effective and proper adjudication of the controversy and avoid multiplicity of proceedings as also that the amendments did not change the nature of the suit. The judgment of the court was based on earlier judgments of the Supreme Court where amendments were allowed based on subsequent events and relevant paras of the judgment of this Court relying on the judgments of the Supreme Court are as follows :

“21. In LIC v. Sanjeev Builders (P) Ltd., 2022 SCC OnLine SC 1128 while considering the scope of Order VI Rule 17 CPC, it has been observed by the Supreme Court as under:—

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings

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falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time



barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)”

22. *The tests laid down by the Supreme Court in LIC v. Sanjeev Builders (P) Ltd., are completely satisfied in the present case. In the facts of the present case, the amendments sought to be made are;*

(i) in pursuance of the order dated 20.09.2021 of the Division Bench and the order dated 25.04.2022 of this Court as noticed hereinabove;

(ii) have been filed at the pre-trial stage;

(iii) based on events that took place subsequent to the filing of the present suit;

(iv) do not set up an entirely new and inconsistent case;

(v) necessary for effective and proper adjudication of the entire controversy between the parties; and



(vi) will avoid multiplicity of proceedings.

23. It is notable that the Supreme Court has reiterated time and again that subsequent events, even at the appellate stage, can afford valid justification for amendment of pleadings/inclusion of fresh prayers. Also, amendment is permitted to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate. In this regard reference may be made to the observations of the Supreme Court in *Rameshwar v. Jot Ram*, (1976) 1 SCC 194 as under:

“9. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its impotence to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson* [*Patterson v. State of Alabama*, 294 US 600 (1934), 607] illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri* [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact *Venkateswarlu*, read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or



otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (See Chokalingam Chetty [54 Mad LJ 88 (PC)]). The law stated in Ramji Lal v. State of Punjab [AIR 1966 Punj 374 : ILR (1966) 2 Punj 125] is sound:

“Courts, do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff's suit would be wholly displaced by the proposed amendment (see Steward v. North Metropolitan Tramways Company [[1885] 16 Q.B.D. 178]) and a fresh suit by him would be so barred by limitation.”

One may as well add that while taking cautious judicial cognisance of “post-natal” events, even for the limited and exceptional purposes explained earlier, no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis.”

24. It is further notable that the Supreme Court has gone to the extent of holding that there is no impediment in allowing a pre-trial amendment even if it seeks to introduce a new cause of action based on events that have transpired subsequent to the filing of the original suit. In this regard, reference may be made to the judgment of the Supreme Court in Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559, wherein it has been held as under:—

“5. The short question arising for decision is whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession.

6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the



trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings."

20. An argument was raised by the Petitioners that on the death of Gul Kumar/Plaintiff No.2, the whole suit abated since his legal heirs were not brought on record. This argument only deserves to be rejected. A bare reading of Order XXII Rule 2 CPC shows that where there are more than one Plaintiff and anyone of them dies and where the right to sue survives on the surviving Plaintiff(s), Court shall cause an entry to that effect to be made on the record and suit shall proceed at the instance of surviving Plaintiff(s).

21. Insofar as the arguments that it was not open to the legal heirs of late Sh. Lila Ram to enter into any settlement during the pendency of the suit, in view of an alleged earlier settlement is concerned, this issue cannot be decided at the stage of deciding the amendment application and would be a matter of trial. Similarly, the other issues as to whether original Defendant No.2 was the owner of the suit property and/or was within his right to transfer the property in favour of Sh. Ashok Kumar can only be decided after the parties lead evidence, as rightly held by the Trial Court. As for the argument that the suit is barred by law and/or Section 34 of the Specific Relief Act, 1963, this cannot be decided at the stage of adjudicating an application under Order VI Rule 17 CPC for determining if the amendment is to be allowed or not *albeit* Petitioners may have other remedies to press these issues.



22. Though subtly an argument was also raised that an amendment is barred by law of limitation on the ground that there was an earlier settlement between the family on 01.07.1974, which was never challenged by the Plaintiffs and once challenge to the earlier transaction was barred by limitation, indirectly the subsequent transactions cannot be challenged to overcome the limitation bar. This contention has no merit and in this context, I may only refer to a recent judgment of the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builder Private Limited & Anr., 2022 SCC OnLine SC 1128***, relevant paras of which are as follows:

“19. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co., AIR 1957 SC 357, this Court at paragraph 16 of the said decision observed as follows:

“16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.....”

20. Again in *T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board*, (2004) 3 SCC 392, this Court observed as follows:

“2.The law as regards permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438] it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment



should be ordered, and does not affect the power of the court to order it.

3. It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law.”

21. So far as the answer to the specific plea that the claim of damages is barred by limitation and cannot be permitted at this stage is concerned, it becomes necessary to examine the various judicial pronouncements of this Court. The principles governing an amendment which may be permitted even after the expiry of the statutory period of limitation were laid down by the Privy Council in its judgment in Charan Das v. Amir Khan, AIR 1921 PC 50. In this case, the Privy Council laid down the principles thus:

“.....That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases : see for example Mohummud Zahoor Ali v. Rutta Koer, where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one.”

22. It would be useful to also notice the observations of this Court in, Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil, 1957 SCR 595 : AIR 1957 SC 363, wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of Kisandas Rupchand v. Rachappa Vithoba Shilwant reported in ILR (1909) 33 Bom 644, when he laid down the principles thus:

“10.“All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a



particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not?"

23. This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in *Ganga Bai v. Vijay Kumar*, (1974) 2 SCC 393, this Court held thus:

"22.The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court....."

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26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

27. In this behalf, in *A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation*, AIR 1967 SC 96 : (1966) 1 SCR 796, this Court held thus:

"7.a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: Weldon v. Neale [[L.R.] 19 Q.B. 394]. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:"

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29. *In Pankaja v. Yellappa (dead) by lrs., (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:*

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

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16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the



same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

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18. We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief."

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.

31. In Ragu Thilak D. John v. S. Rayappan, (2001) 2 SCC 472, this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand."

23. Therefore, in the light of the aforesaid observations of the Supreme Court, it cannot be argued by the Petitioners that as a matter of rule, an amendment application has to be rejected if a plea of bar of limitation is raised by the opposite party. In the present case, the issues raised by the Petitioners pertaining to the earlier family



Settlement in 1974 etc. in support of the bar of limitation are not questions which can be decided at the stage of deciding the amendment application and no infirmity can be found in the order of the Trial Court permitting amendments to the plaint.

24. In view of the aforesaid, this Court finds no error in the impugned order dated 24.02.2022 and CM(M) 280/2022 is dismissed as being devoid of merit. Needless to state that the observations in the present judgment are only for the purpose of deciding the present petition and will have no bearing on the further proceedings in the suit. It is left open to the Petitioners to raise any of the above issues which according to them may lead to rejection of the plaint in appropriate proceeding and if and when Petitioners resort to any such proceedings, Trial Court shall decide the same in accordance with law and without being influenced by the impugned order dated 24.02.2022 or the present judgment.

25. CM(M) 280/2022 is accordingly dismissed alongwith the pending application.

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26. Challenge in this revision petition is to an order dated 23.03.2022 whereby the Trial Court has extended the time in favour of Respondent No.1 to file the amended plaint. Two folds arguments have been raised to assail the order: (a) provision of Order VI Rule 18 CPC is mandatory and a party who obtains leave to amend must file the amended pleading within the time prescribed by the Court or if no time is prescribed then within 14 days from the date of the order and if the party fails to do so, the amendment cannot be taken on record, unless the time is extended by the Court; and (b) the amended plaint



filed by Respondent No.1 was not in accordance with the amendments sought and allowed and were outside its scope and therefore, the filing would be deemed as no filing in the eyes of law and since no amended plaint can be taken to have been filed within the time permitted under law, Trial Court erred in extending the time instead of dismissing the suit.

27. Order VI Rule 18 CPC provides that once an order for leave to amend is granted and time for that purpose is granted by the court, unless the time is extended by the court, amendment will not be permitted to be incorporated, if the party fails to take necessary steps within the time granted or prescribed for the purpose. It is clear from the reading of the provision itself that the rule does not curtail the power of the Court to extend the time granted or prescribed for carrying out an amendment allowed by the Court and the intent/objective of the rule, in my view, is that a party having obtained leave to amend the pleadings cannot do so if it has defaulted in adhering to the time limit without seeking extension from the Court. In this context, I may refer to the following passages from the judgment of this Court in ***Lunarmech Maschinenfabric Ltd. & Anr. v. USF Filtration Ltd. & Anr., 2006 SCC OnLine Del 719:-***

“33. Learned Counsel for the petitioner-defendants has repeatedly submitted that under no circumstances time to file amended plaint could be extended beyond 30 days and has referred to the provisions of order 6 Rule 18, CPC and Section 148, CPC and states that the provisions are mandatory. The said provisions are reproduced hereunder:

Order VI Rule 18:

“18. Failure to amend after order.—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the



order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

Section 148:

“148. Enlargement of time.—Where any period is fixed or granted by the Court for the doing any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Amendments: Objects and Reasons.—Clause 13, Section 148 of the Code provides for enlargement of time by the Court. Where any period is fixed or granted by the Court for doing any act prescribed or allowed by the Code, Court has discretion to enlarge such period. Clause 13 seeks to put a limit on enlargement of such period by inserting the words ‘not exceeding thirty days in total’ in Section 148 with a view to minimize the procedural delay at the instance of either party to a suit.”

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39. In my view the reason given in the application was plausible and it was for the Court to extend time by exercising judicial discretion and the said discretion in the facts and circumstances of the case has been rightly exercised. The matter was then adjourned to 24.1.2005, by the learned Additional District Judge.

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42. The law is well established that the procedure is meant for advancing the cause of justice and not to become a stumbling block in the justice delivery system. In the judgment titled Salem Advocates Bar Association v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3354, several provisions of the amended CPC have been discussed including Section 148, CPC on the point of extending time. The Supreme Court opined that, extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for the reasons beyond the control of the party. Further, there can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days.



43. *In my view, the faxed copy of the amended plaint has been filed in less than 30 days counting from 24.12.2005, as explained above and even if it has been filed beyond 30 days the above mentioned judgment comes to the rescue of the plaintiffs. The original plaint has also been filed on 18.1.2005. Application dated 15.1.2005 for extension of time by 3 days is still pending in the trial Court. In my view the challenge to all the three orders in the second petition is without merit.*

44. *Before parting with this judgment I feel constrained to record that it has become a practice with some litigants not to allow the trial Court to proceed further and reach decision of the main suit. On every interlocutory and procedural order they rush to the higher Courts and more often than not want the higher Courts to go into deep details of the matters to which the trial Court has still to apply its mind and in this way they want to pre-empt the orders to be passed by the trial Courts and want the higher Courts to take up the work of the trial Courts. Such litigants cannot be allowed to hijack the justice delivery system and mould it according to their whims and fancies. In these times of international commercial transactions, our justice delivery system should not lag behind and allow the litigation to go on for years and decades especially when foreign companies are involved. Any act of commission or omission on the part of any party is going to adversely effect the prestige, reputation and economy of the country. Our justice delivery system should not become a bottleneck in the economic development, liberalization and globalisation of the country's trade and commerce.*

45. *In my view, the learned Counsel for the defendants has unnecessarily stretched this matter beyond all reasonable limits. Perusal of the above said three orders on the face of it shows that these are just procedural and interlocutory orders which are passed from time to time during progress of a case. Against such orders a Civil Revision Petition is not maintainable because such orders do not finally dispose of a suit or other substantial proceedings. Apparently, therefore, these petitions have been filed under Article 227 of the Constitution of India.*

46. *The extra ordinary jurisdiction is exercised only when an order passed by the Court or tribunal has resulted in gross failure of justice. In the present case, none of the impugned orders has resulted in gross failure of justice, rather the undue delay being caused at every step at the instance of the defendants is resulting in gross failure of justice and such a tendency of the delaying tactics of the parties has to be curbed with a strong hand."*

28. Therefore, once the Trial Court exercises its discretion in a given case to extend the time, unless the exercise of discretion is

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arbitrary or perverse or in excess of jurisdiction, it warrants no interference. In any event, this question is wholly irrelevant in the present case since it is Petitioners' own case in the present revision petition that the amended plaint was filed on 26.02.2022. The Trial Court by order dated 24.02.2022 had allowed the amendment without prescribing any time to file the amended plaint and therefore, in accordance with Order VI Rule 18 CPC, the amended plaint was required to be filed within 14 days from 24.02.2022 or within time extended by the Court. The amended plaint filed on 26.02.2022 was within a period of 14 days and on this, there can hardly be any debate.

29. The issue that the Petitioners seek to raise is that the amendment carried out was not in consonance with the order dated 24.02.2022 allowing the amendment and therefore, the amended plaint filed on 26.02.2022 was required to be struck off and no extension could have been granted by the Court. On perusal of the impugned order, this Court finds that the Trial Court partially agreed with the Petitioners that some of the amendments viz. amendments in paragraphs 1, 2, 6, 9 as also in last sentence of para 2 were not in consonance with the amendments allowed and therefore directed that an amended plaint be filed in accordance with the order dated 24.02.2022. As the Trial Court permitted Respondent No. 1 to file an amended plaint with modifications on 23.03.2022, which was beyond 14 days from 24.02.2022, Trial Court exercised the power under Rule 18 of Order VI CPC and extended the time, subject to cost. Once the Trial Court was empowered to extend the time and has exercised its discretion, which to this Court does not seem to have been exercised arbitrarily, the impugned order warrants no interference.



30. Revision petition is accordingly dismissed alongwith the pending applications.

JYOTI SINGH, J

JULY 05, 2023/kks/ck/shivam

