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

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Judgment delivered on: 19.04.2023

+ CM(M) 622/2023 & CM. APPLs. – 19055-56/2023

VIKAS VIJ & ANR.

..... Petitioner

versus

VIKRAM VIJ & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjeev Sagar and Mr. Vishal Raj
Sehgal, Advs.

For the Respondent : Mr. Prag Chawla, Adv. for R1 and R2.
Mr. Devashish and Mr. Sagar Bhatia,
Advs. for R3, R4 and R5. along with
respondent no.5 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. Petitioner challenges the order dated 04.03.2023 in CS SCJ 1628/2021 titled *Vikas Vij & Anr. Vs. Vikram Vij & Ors.* whereby the learned Trial Court while permitting the petitioner/plaintiff to withdraw the application under Order VI Rule 17 of CPC, 1908, denied the liberty to file a fresh application under Order VI Rule 17 of CPC, 1908.

2. Mr. Sagar, learned counsel appearing on behalf of petitioner submits that the learned Trial Court misdirected itself while refusing liberty to file the fresh application under Order VI Rule 17 of CPC,

1908 on the basis that there is no prohibition nor is there any provision in the CPC precluding the party from filing a second application under Order VI Rule 17 of CPC, 1908.

3. Mr. Sagar, learned counsel also submits that there is no bar to the number of applications under Order VI Rule 17 of CPC, 1908 being filed by any of the parties subject to the law of limitation and other legal prescriptions which may prohibit the amendments sought in such applications on merits. On that basis, learned counsel submits that the learned Trial Court committed an error in law by not granting such liberty as sought.

4. *Per contra*, Mr. Bhatia, learned counsel appearing for the respondent/defendant vehemently opposed the aforesaid submissions and on the basis that petitioner has from the time of institution of the present suit had taken four adjournments and has changed its counsel for four times in past.

5. Learned counsel for the respondent submits that the petitioner/plaintiff is only interested in delaying and protracting the trial and has submitted that there are number of such cases filed by the petitioner/plaintiff where the conduct is similar.

6. Learned counsel submits that having regard to the fact that an application under Order VI Rule 17 of CPC, 1908 had already been filed, no explanation was given or a reason provided to the learned Trial Court as to why the same is being withdrawn and a fresh liberty is sought to file another application under Order VI Rule 17 of CPC, 1908.

7. On the basis of the aforesaid submissions, learned counsel for the respondent submits that there is no material irregularity or error, or

judicial impropriety committed by the learned Trial Court while passing the impugned order.

8. This court has considered the rival submissions of the parties and also perused the impugned order.

9. At the outset, this court observes that the application under Order VI Rule 17 of CPC, 1908 which was sought to be withdrawn by the petitioner/plaintiff was the first application of such nature.

10. Surely a party which files an application has an equal liberty to withdraw applications with liberty to file a fresh application, if any, subject to law of limitation and any other preclusion in accordance with law, such application could be maintained.

11. This court has observed that by way of impugned order, the learned Trial Court has, without any reasons, rejected the liberty as sought by the petitioner to file a fresh application under Order VI Rule 17 of CPC, 1908.

12. It is not the case of the respondent that the original application under Order VI Rule 17 of CPC, 1908 was in fact, heard and adjudicated on merits.

13. The admitted position is that the application was not adjudicated at all and was sought to be withdrawn with liberty to file a fresh application in its place.

14. Learned Trial Court has committed a manifest error by not granting such liberty, however, such liberty, in view of this court, was not required even otherwise.

15. It is been given to understand by the learned counsel for the respondent that an application under Order VII Rule 11 of CPC, 1908

was also filed by the respondent/defendant on 08.03.2022 which has been pending adjudication till date.

16. Learned counsel requests that the application also may be directed to be disposed off at the earliest.

17. Mr. Sagar, learned counsel appearing for the petitioner has no objection, if such orders are passed.

18. In view of the aforesaid, this court is of the considered opinion that the impugned order, to the extent does not grant liberty to the petitioner to file a fresh application under Order VI Rule 17 of CPC, 1908 is concerned, set aside.

19. The petitioner is at liberty to file an application under Order VI Rule 17 of CPC, 1908 subject to the law of limitation with respect to the amendments as sought.

20. Petitioner is directed to file a fresh application under Order VI Rule 17 of CPC, 1908 within two days from today with an advance copy to the learned counsel appearing for the respondent who may file his reply with two weeks thereafter. Rejoinder, if any, be filed within two weeks thereafter.

21. It is informed that the matter is fixed before the learned Trial Court on 27.05.2023.

22. The learned Trial Court is requested to take up the applications under Order VI Rule 17 of CPC, 1908, if filed by the petitioner and simultaneously also take up the application under Order VII Rule 11 of CPC, 1908 filed by the respondent for disposal in accordance with law.

23. Learned Trial Court shall hear the applications under Order VI Rule 17 of CPC, 1908 and under Order VII Rule 11 of CPC, 1908 in

that order. The aforesaid applications be decided by the learned Trial Court within two months from 27.05.2023.

24. All the contentions of the parties before this court are reserved.

25. The petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J .

APRIL 19, 2023/AT

