



\$~57

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

Date of decision: 02.11.2023

+ **CM(M) 1775/2023 & CM APPL. 56415/2023**

HARSH GOYAL

..... Petitioner

Through: Mr. Deo Prakash Sharma and Mr.
Manoj Yadav, Advocates

versus

NIRAJ GOYAL

..... Respondent

Through: None.

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 56416/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1775/2023

1. This petition impugns the order dated 28.08.2023 passed by the Additional District Judge-02(South-East) District Courts, Saket, New Delhi in CS DJ 602/2022 ('Trial Court') whereby the Trial Court allowed the application of the Respondent under (i) Order VI Rule 17 and of Civil Procedure Code, 1908 ('CPC') and impleaded Smt. Sargam Harsh Goyal as a party to the said civil suit.

1.1. The Petitioner is the original defendant and the Respondent is the



original plaintiff in the civil suit.

1.2. The civil suit has been filed by the Respondent seeking a decree of possession with respect to the suit premises bearing Shops no.5 & 6 a LGF, Saroj Tower, Kalkaji, New Delhi ('suit premises') and for damages for use and illegal occupation and mesne profits against the Petitioner.

2. The learned counsel for the Petitioner states that he is aggrieved by the impugned order inasmuch as his wife Smt. Sargam Harsh Goyal has now been impleaded as a defendant and additionally, the proprietorship entity which carries on business in the suit premises.

2.1 He states that since the Trial Court has accepted the stand of the Petitioner in the written statement that it is Smt. Sargam Harsh Goyal, who is in occupation of the suit premises; then as a necessary corollary the Petitioner herein should have been deleted by the Trial Court exercising its suo-motu jurisdiction under Order 1 Rule 10 CPC.

2.2 He states that the Petitioner herein is the co-owner of the suit premises and the Respondent i.e., plaintiff is his brother.

3. This Court has considered the submission of the counsel for the Petitioner and perused the impugned order as well as the record.

3.1 The suit was filed for recovery of possession against the Petitioner herein. The civil suit was filed on the basis of lease agreement dated 25.06.2021. The plaintiff contended that the lease agreement stands terminated vide notice dated 15.05.2022 due to wilful default in payment of rent by the defendant. In the lease agreement, the lessee is described as M/s Gavva Enterprises and the lease has been signed on behalf of lessee by Mr. Harsh Goyal.

3.2 However, in his written statement the Petitioner herein contended that



the suit premises is being used and occupied exclusively by a proprietorship firm M/s. Gavya Enterprises and his wife Smt. Sargam Harsh Goyal is the sole proprietor of the said firm. In support of said averments, he placed on record the certificates dated 16.03.2022 and 19.07.2021 issued by the Government department in favour of his wife.

3.3 It is a matter of record that the lease agreement dated 25.06.2021 has been signed by the Petitioner herein for and on behalf of M/s Gavya Enterprises. However, in view of stand taken by the Petitioner in the written statement, the Respondent in order to avoid any objection to the grant of reliefs sought in the aforesaid civil suit, filed the subject application to implead M/s. Gavya Enterprises, M/s Veerji Malai Chaap and its sole proprietor Smt. Sargam Harsh Goyal as a party, so that the relief of possession can be granted effectively. This would also ensure that the said parties are duly heard before a decree of possession is granted.

4. This Court would like to refer to provisions of Order I Rule 7 CPC which reads as under:

5. *When plaintiff in doubt from whom redress is to be sought.*—Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties

The said provision entitles the plaintiff to join more than one defendant so as to make the decree effective and executable. In the opinion of this Court, the Respondent has acted prudently in impleading the new defendants in light of the stand taken in the written statement.

6. In the application filed under Order VI Rule 17 CPC, the plaintiff has pleaded that with the Petitioner i.e., defendant, is the one who is running and operating the business from the suit premises and infact the Statutory



Authorities have also issued challans in the personal name of the Petitioner herein.

6.1 The learned counsel for the Petitioner does not dispute, the issuance of the challans in the name of the Petitioner, he however states that the said fact is not sufficient to maintain the suit against him.

7. This Court is unable to accept the contentions of the Petitioner herein.

7.1 The presence of the Petitioner in the suit premises and the fact that he is actively operating the business in the said suit premises which is *ex facie* evident from the issuance of the challans; the fact that the Petitioner has signed as a lessee in the lease agreement and in view of the provisions of Order I Rule 7, this Court is of the view that the application filed by the Respondent under Order VI Rule 17 CPC to implead Smt. Sargam Harsh Goyal additionally has been rightly allowed by the Trial Court.

8. The learned counsel for the Petitioner states that in the said application Respondent had sought to amend his plaint to include additional paragraphs nos. 2A, 2B and 2C. He states however, the said averments made to amend the plaint are not relevant. He also relies upon the judgment of the Supreme Court in this regard passed in ***Rajesh Kumar Aggarwal vs. K.K. Modi (2006) 4 SCC 385***, more specifically on paragraphs 14 to 18 which reads as under:

14. Order 6 Rule 17 CPC reads thus:

“17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”



This rule declares that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of



amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

(Emphasis Supplied)

9. The aforesaid judgment relied upon by the Petitioner lends support to the impugned order. The Trial Court while permitting the amendment has recorded that the suit is still at the initial stages and issues have not been framed. Further it has also categorically opined that since the amendments proposed to the plaint are on account of the stand taken by the defendant in the written statement, the same are permissible. The Trial Court has already clarified that the veracity of the averments has not been examined and will remain subject to proof.

10. This Court has as well perused the proposed amendments at paragraphs 2A, 2B and 2C and this Court finds that the said averments in no manner changes the cause of action on the basis of which initial suit was filed.

11. Accordingly, this court finds no infirmity in the order passed by the Trial Court warranting supervisory correction, in exercise of Article 227 jurisdiction of this Court.

12. This petition is accordingly dismissed along with pending applications.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 2, 2023/rk/ms

[Click here to check corrigendum, if any](#)