



2024:DHC:2410



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.03.2024

+ CM(M) 1223/2023

ANWAR KHAN

..... Petitioner

Through: Mr. Sudhir Mendiratta, Adv. with
petitioner in person.

versus

MOINUDDIN & ORS

..... Respondents

Through: Mr. Deepak Kumar Vijay & Mr.
Shubham Shivansh, Advs. for R5.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (O R A L)

1. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 02.05.2023 passed by the learned Civil Judge-05, Tis Hazari Courts, Delhi (hereinafter referred to as "Trial Court") in CS/SCJ No.326108/2014 titled as "*Anwar Khan vs. Moinuddin & Ors*". The petitioner herein is the plaintiff and the respondents are the defendants before the learned Trial Court.

2. The petitioner had filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking amendment of prayer clause in the original plaint which was dismissed by the learned Trial Court. The relevant facts for disposal of present petition are that the



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petitioner has filed a suit for permanent and mandatory injunction as well as damages against the respondent. The case of the petitioner is that the respondent nos.1 to 4 in connivance with the respondent no.5 arbitrarily disconnected the electricity meter of the petitioner, due to which the shop of the petitioner remained shut from 28.06.2011, causing him huge economic loss.

3. After the restoration of the meter, on 01.08.2015, the respondent nos.1 to 4 forcibly entered the shop of the petitioner and assaulted him, after which they tried to burn down the shop. The petitioner states that since 01.08.2015, he has not been able to work out of the said shop due to defendant nos.1 to 4 and is therefore seeking damages for a time period from 01.08.2015 to 31.03.2022 amounting to 3655 days at Rs.2,000/- per day.

4. Vide the application under Order VI Rule 17 CPC, the petitioner sought to amend the existing prayer clause (a), (b) and (c) of the plaint. However, the learned Trial Court vide the impugned order stated that the prayer clauses could not be amended without amending the pleadings in the plaint and subsequently dismissed the application under Order VI Rule 17 CPC. Being aggrieved with the order, the petitioner has invoked the jurisdiction of this court vide the present petition.

5. At the outset, learned counsel for the petitioner submits that he only seeks to press prayer clause (c) of the application *vis-à-vis* damages from the respondent no.5 with respect to his amendment application. The learned counsel submits that a typographical error had been made, which ought to have been rectified and the learned Trial Court has erred in deleting



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respondent no.5 from the array of parties and consequently disallowed the petitioner to amend clause (c) of the prayer clause.

6. Learned counsel further submits that the respondent no.5 disconnected the electricity connection which is in violation of the provisions of Section 56 of the Electricity Act, 2003. Further, compliance with Section 43 of the Electricity Act was not made despite the suit bearing No.381/2011 being filed.

7. The learned counsel for the petitioner also submitted that that BSES Yamuna Power Ltd have averred in their written statement that the Enforcement team inspected the residential portion of Zahiruddin (father of the respondent no.1/ now deceased) at first floor of 2625, Baradari, Ballimaran, Delhi and found that the user Zahiruddin was indulging in illegal tapping of electricity using an electric wire, thus the user was booked for the offence and a direct theft bill amounting to Rs. 1.42 Lakhs with due date of 27.04.2007 was raised in his name. However, the user expired and had not paid the aforesaid amount in the bill raised. Thereafter, once the connection was re-installed on 18.02.2011, the BSES Yamuna Power Ltd and respondent no. 5 insisted the petitioner to pay the aforesaid bill amount and thereafter did not restore the electricity connection of the petitioner.

8. The learned counsel for the respondent no.5 while opposing the submissions, states that the petitioner never sought declaration of the theft bill as null and void from the Special Electricity Court thereby making the present suit not maintainable. Till the dues are not cleared by the petitioner being the owner of the premises, the electricity connection cannot be restored, therefore, the question of payment of damages does not arise.



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9. It is further submitted that the petitioner by way of the proposed amendment seeks to claim damages from the respondent no.5 after the lapse of eight years, which is barred by limitation. Reliance is placed on ***“Muni Lal vs Oriental Fire & General Insurance Co. Ltd.: AIR 1996 SC 642.”***

10. Further, the electricity connection was restored on 02.11.2014, therefore satisfying clause (a) of the prayer clause in compliance with the court order dated 28.10.2014 and now the petitioner seeks to claim damages eight years after the restoration. The clause (c) cannot be amended at such a belated stage as it would cause the respondent no.5 grave prejudice.

11. A very short controversy has arisen in the present petition with respect to prayer clause (c) as appearing in the amended plaint filed on behalf of the petitioner. It is submitted by counsel for the petitioner that due to some typographical error, the name of respondent no.5/defendant no.5 could not be mentioned in prayer clause (c) whereas in prayer clause (b) specific relief has been sought against the said respondent i.e. defendant no.5 in the original plaint.

12. It is submitted that by moving a fresh application under Order VI Rule 17 CPC, the petitioner was looking for correction of the said typographical mistake which has been completely erroneously ignored by the learned Trial Court by holding that no relief with respect to damages has been claimed by the petitioner in his plaint. Petitioner submits that this is not the case as has been interpreted by the learned Trial Court. On the other hand, the respondent no.5 has challenged the present petition by raising a simple submission that the amendment that the petitioner wants to bring about is with respect to a time barred plea and is being raised after 8



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years, thus, the same is impermissible in law.

13. Needless to say that the learned Trial Court has dismissed the application under Order VI Rule 17 CPC by observing that the “*plaintiff wishes to amend the prayer clause without amending the pleadings in the plaint.*” The learned Trial Court has concentrated on prayer clause (a), which in fact is not the relief which the petitioner is seeking with respect to respondent no.5. The said relief exists only with respect to defendant nos.1 to 4. Moreso, in the amended plaint in para 6, the petitioner has mentioned about the loss being suffered by him everyday which reads as under:

“6. That plaintiff is suffering a loss of Rs.2,000/- per day in his business due to disconnection of electricity.”

14. Even otherwise, the petitioner is looking for correction of a typographical error for which even a formal application under Order VI Rule 17 CPC is not required.

15. Accordingly, the petitioner is allowed to make correction with respect to typographical error in prayer clause (c) of his amended petition wherein defendant nos.1 to 4 shall be read as defendant nos. 1 to 5.

16. In view of above, the impugned order dated 02.05.2023 is modified to the extent that the learned Trial Court should not delete defendant no.5/respondent no.5 from the array of the parties and the aforesaid correction to be made in prayer clause (c) of the original plaint.

17. With the above observations, petition stands disposed of.

SHALINDER KAUR, J.

MARCH 20, 2024/f/ab