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

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Date of Decision: 18.01.2024+ **FAO(OS) 100/2022****DEEPAK KHOSLA AND ORS.**

..... Appellant

Through: Mr Raman Kapur, Senior Advocate
with Mr Manish Kumar, Mr Varun
Kapur, Mr Aakrisht Kalra and Ms
Shruti Verma, Advocates.

versus

JYOTI WAZIR AND ORS.

..... Respondent

Through: Mr Siddharth Yadav, Senior Advocate
with Mr Narender, Advocate.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)**

1. This appeal is directed against the order dated 25.07.2022, passed in an interlocutory application i.e., 6790/2019 by the learned Single Judge.

1.1 The said interlocutory application was moved by the respondents/plaintiffs to take on record the amended plaint filed in 2003.

2. The record shows that on 24.02.2022, the then Single Judge permitted the amended plaint to be taken on record.

3. The order dated 24.02.2022 was carried in appeal to the Division Bench. The Division Bench disposed of the appeal via judgment dated

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Signing Date: 22.01.2024

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19.04.2022 with the following operative directions: -

“8. In our view, this issue cannot be left to be determined at the final hearing of the suit and the same should be decided before the final hearing, so that the parties are aware about the scope of the final hearing which would take place when the suit is finally heard on merit.

9. We, therefore, direct that the learned Single Judge shall proceed to determine the aforesaid issue before proceeding with the final hearing of the suit.”

4. It has been pointed out by Mr Raman Kapur, learned senior counsel, who appears on behalf of the appellant, that pursuant to the order dated 05.09.2022 passed in the above-captioned appeal, the appellants have filed an amended written statement.

5. Mr Siddharth Yadav, learned senior counsel, who appears on behalf of the respondents/plaintiffs, informs us that the replication to the amended written statement has also been filed. The learned Single Judge *via* the impugned order has concluded as follows: -

“16. As detailed above, the question whether the issues have been framed on amended plaint or they need to be reframed on the basis of the amended plaint and whether the evidence led by both the parties covers the issues raised in amended plaint, can be determined only after the Written Statement, if any, has been filed by the defendants to the amended plaint.”

6. A perusal of the aforesaid observations made in the impugned order in essence holds that the learned Single Judge will address his/her mind to the aspect as to whether the issues which are already framed cover the amended plaint or whether additional issues need to be framed.

7. In our opinion, in case additional issues are framed, parties should have liberty to lead evidence *qua* the same, provided the evidence already led does not cover the issue(s) and pleadings available on record prior to the amendment of the plaint.

8. The appeal is disposed of in the aforesaid terms.

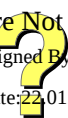
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2024:DHC:450-DE



9. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 18, 2024

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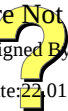
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