



\$~A -87

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

+ C.R.P. 239/2024, CM APPL. 45994/2024 & CM APPL. 45995/2024

SANJEEV KUMAR JUNEJA & ANR.Petitioners

Through: Mr. Ashwini K. Sakhuja and Mr.
Puneet Saini, Advocates.

versus

JERA- JANGPURA EXTENSION RESIDENTS ASSOCIATION
(REGD.) AND ORS.Respondents

Through: Mr. Nitesh Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

23.09.2024

%

1. The instant civil revision petition under Section 115 of Code of Civil Procedure, 1908 (hereinafter as the "CPC") has been filed on behalf of the petitioner seeking following reliefs:

"a. Quash and set aside impugned order dated 09.04.2024 passed by Sh. Umesh Kumar, CJ-0 1/SE/Saket in CS SCJ 680/2021.

b. Pass any other and/or further order(s) which the Hon'ble Court deems fit and proper under the circumstances of the case."

2. The brief facts of the case are that the respondent no.1/ plaintiff filed an original civil suit bearing no. CS SCJ 680/2021 before the learned Trial Court, seeking a relief of declaration and mandatory injunction against the five defendants therein, which consists of the petitioners no. 1 and 2 and respondents no. 2, 3 and 4, respectively.



3. An application under Order VII Rule 11 of the CPC was filed by the petitioners before the learned Trial Court for the rejection of plaint on 12th July, 2021. However, before the disposal of the said application, the respondent no. 1 filed an application under Order VI Rule 17 of the CPC for amendment of the plaint seeking to accommodate additional prayers to the plaint.

4. Upon filing of the respondent no.1's petition, the learned Trial Court directed the petitioners to file a written statement to the same. Thereafter, the learned Trial Court heard the said application and passed the impugned order dated 9th April, 2024 by allowing the application for amendment of the plaint under Order VII Rule 11 of the CPC.

5. Aggrieved by the same, the petitioners herein filed the instant revision petition seeking setting aside of the impugned order.

6. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in allowing the application made under Order VI Rule 17 of the CPC for amendment of plaint while the application under Order VII Rule 11 of the CPC for rejection of the plaint was already pending before the learned Trial Court.

7. It is submitted that the learned Trial Court failed to consider the settled principles of law that while an application under Order VII Rule 11 of CPC is pending before the Court, no further proceeding before the same can be permitted unless the said application is disposed of in accordance with the law.

8. It is submitted that the respondent no. 1 purposefully filed the application for amendment of plaint as he anticipated that the outcome of the disposal of the application for rejection of plaint would result in making



his suit infructuous and plaint rejected.

9. It is further submitted that the application under Order VI Rule 17 of the CPC is filed at a belated stage of the proceedings and therefore, it is prayed that the instant petition may be allowed.

10. *Per Contra*, learned counsel appearing on behalf of the respondents submitted that the learned Trial Court has rightly passed the impugned order by allowing its application for amendment of plaint as additional prayers are necessary to be included for proper adjudication of the matter.

11. It is submitted that the learned Trial Court was correct in allowing the said application of the plaintiff on the ground that the amendment of the plaint will not alter the subject matter of the case.

12. It is further submitted that due to its limited scope of jurisdiction under Section 115 of the CPC, this Court has no power to interfere with the impugned order passed by the learned Trial Court.

13. Therefore, in view of the foregoing submissions, it is prayed that the instant petition is devoid of any merit and is liable to be dismissed.

14. After some length of arguments, learned counsel for the petitioner submitted that he is not pressing the instant prayer at this stage and made an innocuous prayer to grant liberty to raise all the submissions before the learned Trial Court at the appropriate stage.

15. It is further submitted that the learned counsel for the petitioner may be permitted to file the written submissions and seeks further time to file the same before the learned Trial Court. It is further submitted that the learned Trial Court may give a further week's time to file the written submissions as the matter is listed before the learned Trial Court on 25th September, 2024.

16. At this juncture, learned counsel for the respondents raised no



objection to the innocuous prayer made by the learned counsel for the petitioners.

17. Heard learned counsel appearing on behalf of the parties and perused the contents made in the instant petition as well as the impugned order dated 9th April, 2024.

18. It is a settled principle of law that an application for an amendment of the plaint under Order VI Rule 17 of the CPC ought to be decided prior to the application under Order VII Rule 11 of the CPC. The said principle has been discussed categorically by this Court in the case of ***Krimm Business Solutions Pvt. Ltd. Vs. Jagdish Prasad Aggarwal and Ors., 2024:DHC:5478***, wherein it was observed that where the plaintiff has sought to amend the plaint in order to seek an additional relief, the application under Order VI Rule 17 of the CPC should be allowed rather than dismissing the suit for being infructuous. Therefore, in order to avoid the dismissal of the suit, the additional relief sought by the plaintiff/respondent requires to be included in the plaint by amending the same under Order VI Rule 17 of the CPC before adjudicating the application for rejection of the plaint under Order VII Rule 11 of the CPC.

19. At this juncture, it is also pertinent to note that an innocuous prayer was made by the learned counsel for the petitioner, wherein the petitioner is not willing to proceed with the instant petition and keen to raise all the submissions before the learned Trial Court at the right stage. With regard to the same, no objection regarding the said innocuous prayer has been raised by the learned counsel for the respondents.

20. Therefore, in light of the said innocuous prayer, without adverting to the merits of the case, this Court has remanded back the matter to the



learned Trial Court and is inclined to allow the innocuous prayer made on behalf of the petitioners to file the written submissions before the learned Trial Court within a week's time from the date fixed before the same i.e., 25th September, 2024 in original civil suit bearing no. CS SCJ 680/2021.

21. In view of the above facts and circumstances, the instant civil revision petition along with pending application(s), if any, are disposed of, accordingly.

CHANDRA DHARI SINGH, J

SEPTEMBER 23, 2024

rk/mk

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