



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

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Judgment reserved on: 28.02.2024

Judgment pronounced on: 20.05.2024

+ CM(M) 657/2016 and CM APPL. 24209/2016—stay
RAJ CHAUDHARY & ANR Petitioners
Through: Mr. Rahul Dubey, Adv.

versus

COL RAJINDER SINGH BHASINE & ANR Respondents
Through: Mr. Amit P. Deshpande, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The issue in dispute in the present petition pertains to allowing of application filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") by the respondent no. 1/plaintiff no. 1 before the learned Trial Court.
2. The factual matrix leading to institution of the present petition reveal that the respondents had filed a suit for possession along with damages against the petitioner on 18.03.1997. The petitioners contested the said suit by filing written statement in the month of October, 1997. In May of 2000, an amended plaint was filed in Suit No. 1602/2000 before this court as the learned Additional District Judge returned the plaint originally instituted before it for filing the same before appropriate court after giving proper valuation for the purpose of possession. To said amendment suit, the



respondents filed their amended written statement. Thereafter, due to enhancement of the pecuniary jurisdiction of the District Courts the matter got transferred back to the District Courts.

3. Subsequent thereto, the respondents filed an application under Order VI Rule 17 read with Section 151 CPC and on the other hand, the petitioners, moved an application under Order VII Rule 11 CPC. The said application was moved keeping in view the fact that the respondent had to carry out certain amendments in the original plaint which were beyond the scope of order dated 11.05.2000 passed by learned Trial Court. Both the applications were disposed off by learned Trial Court vide order dated 15.11.2007 and the learned Trial Court directed the respondents to file the plaint strictly in consonance with the order dated 11.05.2000 passed by the Court. The said order was again not complied with and the amended plaint dated 22.12.2007 was filed, again carrying out more changes than what was allowed by the learned Trial Court. However, the petitioners without prejudice to their rights, on 17.03.2008, filed amended written statement taking all such objections to which replication was also filed. Thereafter, evidence was led by both the parties, arguments were heard and both the parties filed their respective written submissions.

4. On 02.11.2015, respondent no. 1 moved an application under Order VI Rule 17 read with Section 151 CPC to amend and clarify paragraph no. 3 and prayer clause 'a' of the plaint to which petitioners filed their reply. In the meantime, an application was moved on behalf of the respondent thereby seeking leave of the court to allow them to withdraw the said amendment



application with liberty to file the same after amending the description of the property in paragraph no. 5,6,8 and 11 of the plaint. The petitioners without prejudice to their objections and contentions submitted that the application under Order VI Rule 17 already filed on behalf of respondent no. 1 may also be considered as seeking similar amendment in paragraph no. 5,6,8 and 11 of the plaint. The learned Trial Court allowed the said application with above-mentioned modifications of the respondent no. 1 vide order dated 05.03.2016. The petitioner is aggrieved by the said order passed by the court of learned Additional District Judge-13, Central District, Tis Hazari Courts, Delhi (hereinafter referred as 'Trial Court') in C.S No. 144/2006 and has assailed the same before this court by filing the present petition under Article 227 of the Constitution of India, 1950.

Submissions by the Petitioners:

5. Mr. Rahul Dubey, learned counsel for the petitioners submitted that the learned Trial Court has not rightly appreciated the provision under Order VI Rule 17 CPC whereby it has been incorporated 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 the trial. In the present case, not only the entire trial was concluded but, even the case was at the stage of final arguments and the part arguments were also addressed and only at such a juncture an amendment application was moved by the respondent thereby seeking amendment of claim.



6. Learned counsel for the petitioners submitted that it is not the case that the amendments raised could not have been brought to light in spite of due diligence as one of the respondents has herself admitted in her cross-examination about the inconsistent evidence and flaw in their case..

7. Learned counsel for the petitioners submitted that throughout the plaint, the plaintiff has referred to the suit property as “room over garage” and even in their respective evidence it has been described as the same. The site plan annexed with the plaint, also does not show the suit property in red color as alleged in the plaint and as such the respondent could not have been permitted to amend the plaint by substituting the words “room over the garage” with the expression “second servant room in the garage block.” The respondent failed to show reasonable cause for allowing such amendments.

8. Learned counsel for the petitioners submitted that the learned Trial Court has wrongly observed that the arguments of the petitioners regarding proviso to Order VI Rule 17 CPC is not tenable as the suit was instituted prior to the amendment in CPC and the learned Trial Court has failed to observe that the plaint was amended as late as in December, 2007 and the petitioners also filed their amended written statement to the amended plaint dated 22.12.2007.

9. The petitioners further submitted that in the garb of the amendment, the respondents could not have been permitted to set up a new case by changing the description of the suit property and at the same time trying to introduce a new document without proving the same, at the stage of final arguments, in the shape of a fresh site plan.



10. To conclude the arguments, the petitioners submitted that the application moved by the respondent for amendment before the learned Trial Court ought to have been signed by all the parties whereas in the present case only, respondents had signed the same and therefore, same was liable to be dismissed. Moreover, neither was there any prayer for taking on record the site plan filed alongwith the application under Order VI Rule 17 CPC nor can a fresh document can be taken on record when evidence has been concluded by all the parties.

Submissions by the Respondents:

11. Mr. Amit P. Deshpande, learned counsel for the respondents confuted the submissions of the petitioners by stating that the amendment sought by them is only clarificatory in nature and is neither changing the nature of the claim nor nature of the suit nor any evidence is required to be led on this and therefore, no prejudice shall be caused to the petitioners, by the order passed by learned Trial Court.

12. Learned counsel for the respondents submitted that the dispute is with respect to identity of the suit property which was never been raised earlier hence the respondent in spite of due diligence could not have moved for amendment at an earlier stage. Moreover, no new facts are sought to be incorporated and the amendments are only clarificatory and formal in nature.

13. Learned counsel for the respondents submitted that as a matter of fact there is one room on each mezzanine floor described in site plan as “S Room” or for domestic storage. The said room is also used as servant room by the respective occupants. The suit was always with respect to the “second



servant room in the garage block.” Due to oversight the word “second” got left out from the description of the property in the plaint.

14. The respondents submitted that the dispute pertains to the servant room attached to the first floor of the suit premises namely “second servant room over garage.” The respondents by way of the present application under Order VI Rule 17 CPC wanted to bring this clarification before the learned Trial Court which was rightly appreciated and allowed by the learned Trial Court vide impugned order dated 05.03.2016.

Analysis & conclusion

15. Before considering the facts of the present petition, it is useful to refer to Order VI Rule 17 CPC which reads as under:-

“17. Amendment of pleadings.-

The court may at any stage of the proceedings allow either party to alter or amend his pleading 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.”

16. The object behind adding restoring Order VI Rule 17 CPC to advance substantial justice and to determine the real question of controversy between the parties. The Apex court has time and again expressly observed that however careless omission/amendment maybe it may be allowed if it does not cause injustice to the other side. Nonetheless, the proviso to the said provision which was inserted by Code of Civil Procedure (Amendment) Act, 2002 with effect from 1 May, 2002 works as a caveat to the said right of



amendment. The proviso has curtailed the jurisdiction of the court to allow an amendment after the trial has commenced. However, an exception to the proviso lies in the fact that the court may allow an amendment even after the commencement of the trial if it can be proven that in spite of due diligence, the party seeking the amendment could not have raised the matter before the commencement of the trial. For the purpose of proviso to Order VI Rule 17, the trial is said to have been commenced from the date when issues are framed.

17. In the present case, the learned Trial Court has allowed the amendment sought by the respondent by relying upon the Doctrine of relation back.

18. Reference is also made the case titled as **Laxmidas v. Nanabhai** [AIR 1964 SC 11 (18)] wherein the Hon'ble Supreme Court has observed as follows:-

“it is no doubt true that save in exceptional cases, leave to amend under Order VI, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only where either fresh allegations are added or fresh reliefs are sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, the question of bar of limitation is not one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading.”

19. It is important to note the observations of the Apex Court in the case titled as **Salem Advocate Bar Association, T.N. vs Union of India** [(2005) 6 SCC 344] wherein it is held as under:-



“26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

20. The provision under Order VI Rule 17 CPC again came up for consideration before the Hon’ble Supreme Court in the case of **Abdul Rehman and Anr. vs. Mohd. Ruldu & Ors.** [(2012) 11 SCC 341] wherein it has been observed:-

“11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that 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. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel v. Gattu Mahesh and Rameshkumar Agarwal v. Rajmala Exports (P) Ltd.* Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”



21. In view of this background and the position of law as clarified by various judgment on the power of the Court to allow the amendment of pleading, the rival submissions of parties are to be considered. The respondent had requested for amendment in his plaint primarily on the ground that the dispute with respect to identity of the property had never been raised prior to his filing of the application and it is necessary to clarify the same else the ambiguity in identifying the suit property will remain in the proceedings and even after concluding the same.

22. The petitioners are challenging the amendment on the basis of the Proviso stating that the amendment of the plaint cannot be permitted after the issues have been framed and in the present case, evidence has also been led by the parties. Moreover, it was stated that the respondents were fully aware and conscious of the alleged defects in their plaint from day one and at least from the date when it was mentioned in the written statement by the petitioners and subsequently, in the cross examination of one of the respondent, it emerged, the necessary amendment if required should have been carried out.

23. The learned Trial Court has rightly considered the issue and observed as under:-

“12. It is the settle proposition of the law that while considering the application under Order 6 Rule 17 CPC the court has not to go into the merit of the amendment. The language of Order 6 Rule 17 CPC is such that it mandates that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Basic principle which should be taken into consideration while allowing or rejecting the application for amendment are :-



1. whether the amendment sought is imperative for proper and effective adjudication of the case;
2. whether the application for amendment is bonafide or nullafide;
3. the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
4. refusing amendment would in fact lead to injustice or lead to multiple litigation
5. as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.
6. amendment should not change the nature of the suit.”

24. Pertinently, in the previous site plan filed with the suit, ‘the room over the garage’ has been shown in red colour and it is the same room which now being is sought to be described as ‘second servant room over the garage’ by the respondents. The petitioners in the written statement in paragraph nos. 3, 5, 6, 8 and 11 are raising defence with respect to the said room only which the respondents have described as ‘room over the garage’ and the respondent have referred to it as ‘third room above the garage’ and claiming it to be part of second floor.

25. It is true that from the averment of both the parties, it is plainly clear that the location of the room in the site plan has been shown correctly, however, the parties are identifying the said room with different nomenclature. In this regard the learned Trial Court has correctly observed that the amendment sought by the respondents are clarificatory in nature and no prejudice shall be caused to the petitioners if the suit property is described as ‘second room over the garage’ which the petitioners are already defending.



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26. The amendment sought by the respondents is necessary for effective adjudication of the case as the proper identification of the suit property is required.

27. In view of the above, no infirmity in the impugned order could be found so as to set it aside. Consequently, the present petition is dismissed.

SHALINDER KAUR, J.

MAY 20, 2024
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