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

% ***Date of Decision: 21st March, 2025***

+ **CM(M) 2012/2024 & CM APPL. 13018/2024**

K S FORGE METAL PVT LTD

.....Petitioner

Through: **Mr. Rajesh Pathak, Advocate.**

versus

**SH K K AGGARWAL SINCE DECEASED THROUGH HIS
LEGAL HEIRS SMT.DEEPIKA AGGARWAL & ORS.**

.....Respondent

Through: **Mr. Alope Kumar Bhattacharya &
Mr. Vivek Pandey, Advocates for
Respondent No. 4(b)**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is aggrieved by order dated 06.01.2024 whereby learned Trial Court has turned down its request to amend the plaint.
2. The fact lies in a narrow compass.
3. The petitioner has filed a suit for declaration, possession and permanent injunction. At the time of institution of the abovesaid suit, the property in question i.e. industrial plot situated at Rajasthani Udyog Nagar, Delhi was with defendant No.1 and as per the prayer clause, the plaintiff had, *inter alia*, sought *decree of possession* against defendant No.1 with direction to him to hand over the possession of such plot to the plaintiff Company.
4. It also needs to be highlighted, right here, that the above suit was,



initially, filed before this Court on its original side and was registered as CS (OS) No. 1385/2007.

5. When the abovesaid suit was taken by this Court on 13.12.2013, one application i.e. I.A. No. 20290/2013 moved by one Mr. R N Singh (since deceased) was taken up by this Court and after some arguments, prayer was made by the abovesaid applicant that he may be impleaded as defendant in the abovesaid suit. Since such request was not opposed by the plaintiff, said applicant i.e. Mr. R N Singh was impleaded as a party, same day.

6. Amended memo of parties was filed in which his name was shown as defendant No. 4.

7. Admittedly, by that time, the issues had already been framed and the case was at the stage of evidence.

8. The case did not move backwards except for the fact that defendant No. 4 was permitted to file written statement, in which he did admit that he was in possession of the abovesaid plot.

9. The parties were directed to adduce evidence.

10. In the interregnum, with change in pecuniary jurisdiction, the case, got transferred to District Courts and, presently, it is at the stage of final arguments.

11. It also needs to be highlighted that Mr. R.N. Singh, unfortunately, died during the pendency of the proceedings and his LR's have been brought on record, and Mr. Bhattacharya, learned counsel, represents one such LR i.e. defendant No. 4(b) Mr. Manish Singh, in the present petition.

12. The prayer clause of the abovesaid suit, as it stands today, is as under:-

a) pass a decree in favour of the plaintiff and against the defendants,



declaring that the agreement to sell dated 24.3.2004 alongwith the SPA, GPA, letter of possession and receipt for Rs . 40,00,000/- all dated 24.3.2004 as illegal null and void and not Binding on the plaintiff company;

b) pass a decree of possession in favour of the plaintiff and against the defendants, directing the defendant no. 1 to hand over the possession of the said plot of land being 31, Rajasthani Udyog Nagar, G . T. Karnal Road, Delhi to the plaintiff company;

c) pass a decree of permanent injunction in favour of the plaintiff and against the defendant no. 1, its agents, servants, nominee, legal heirs, representatives etc. to maintain status quo and not to dispose of or part with possession or alienate or mortgage or create any third party interest in the property bearing no. 31, Rajasthani Udyog Nagar, G.T. Karnal Road, Delhi, in any manner

d) pass ex-parte ad-interim injunction in terms of prayer (c) above and confirm the same after notice to the defendant;

e) grant costs of the present suit in favour of the plaintiff and against the defendant:

f) pass any other or further order as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

13. The plaintiff, being unmindful of the fact that defendant No. 4 had been impleaded, who had even admitted his possession over the plot, did not take any step for amending the prayer clause and such prayer clause continues to the effect that defendant No.1 be directed to hand over the possession.

14. Admittedly, the possession is with defendant no.4.

15. While preparing for final arguments, learned counsel for the plaintiff came across the above said anomaly and omission, and it is in the abovesaid factual background that it filed an application seeking consequential amendment. By virtue of the above said application, he sought liberty to add para 10A which merely reflects the factual aspects, which are not even disputed by the defendants, and requests to amend the prayer clause i.e. clause b) and c) to the following effect: -



*"b) pass a decree of possession in favour of the plaintiff and against the defendants, directing the **defendant no.1** and / or the **Defendant No.4, their legal representatives / successors, assigns etc.** to hand over the possession of the said plot of land being 31, Rajasthani Udyog Nagar G.T. Kamal Road, Delhi to the plaintiff company;*
c) *pass a decree of permanent injunction in favour of the plaintiff and against the **defendant no.1** and / or the **Defendant No.4**, its agents, servants, nominees, legal heirs, representative etc. to maintain status quo and not to dispose of or part with possession or alienate or mortgage or create any third party interest in the property bearing no. 31, Rajasthani Udyog Nagar, G.T. Kamal Road, Delhi, in any manner;"*

16. The abovesaid request has been disallowed by the learned Trial Court for the reason that element of "*due diligence*" on the part of plaintiff is missing. It also observed that the plaintiff itself was negligent and, therefore, the proposed amendment has been declined.

17. Such order is under challenge.

18. This Court is mindful of the fact that the case is already at the stage of final arguments and that the suit was instituted way back in the year 2007.

19. However, at the same time, this Court can very well imagine a situation with which the petitioner may be faced with. If, eventually, the suit is decreed in favour of the plaintiff and decree is drawn in terms of existing prayer, there is a possibility that such decree, so far as it relates to LRs of defendant No. 4, may not even be executable and, thus, it may remain a decree on paper only, *unless the court adopts the principle of moulding of relief at the time of final adjudication.*

20. During course of the arguments, learned counsel for petitioner submitted that except for incorporation of admitted facts in para 10A, and corresponding amendment in the prayer clause, the plaintiff does not seek



anything more, at all. It does not even want to lead any further evidence, once such amendment is allowed and, therefore, it is submitted that no delay is going to be caused and no prejudice would be occasioned to the successors-in-interest of defendant No. 4, who, admittedly, are in possession of plot.

21. Mr. Bhattacharya, learned counsel for Manish Singh submits that the plaintiff should have been vigilant itself, but for the reasons best known to the plaintiff, despite the fact that the impleadment had taken place in the year 2013, it did not take any step to amend the prayer and, therefore, at such a belated stage, such request should not be entertained.

22. Undoubtedly, the case is at the stage of final arguments and the plaintiff should have been vigilant and careful and should have moved the appropriate application seeking amendment immediately after the impleadment of R. N. Singh, but at the same time, it also becomes obvious that if the amendment is declined, there is a possibility of there being serious adverse implication and prejudice to plaintiff/petitioner, in the event, it is found entitled to a decree. It may not be in a position to get the decree *executed vis-à-vis* the legal representatives of defendant No.4. This court is compelled to form such impression as the application in question has been dismissed.

23. Learned counsel for Mr. Manish Singh supplements that there is no question of there being any prejudice to the plaintiffs as the they have already filed a separate suit against defendant No.4, and by virtue of such subsequent suit, they are seeking possession of same plot from defendant No.4.

24. Learned counsel for the petitioner, however, submits that the above



said suit is, altogether, on a different premise and is based on specific directions passed by this Court. When the suit was pending in High Court of Delhi, on its original side, this Court, on 11.09.2013, appointed Mr. Vinod Kumar Bansal, Director of the plaintiff company as Receiver and he was authorized to take steps to terminate the monthly tenancy, if any, of Mr. R N Singh, and also to take steps for his eviction in accordance with law. He submits that it is in context of the abovesaid order, and in that particular capacity of his being appointed as Receiver by the Court, such separate suit has been filed and, therefore, the issues in both the suit are substantially different.

25. Mr. Bhattacharya, learned counsel submits that he would explore whether there is any requirement of moving any application under section 10 CPC in the abovesaid subsequent suit. Needless to observe, he is always at liberty to take any such action, as permissible under law.

26. When asked, Mr. Bhattacharya, in all fairness, submitted that if the amendment is allowed by this Court, they would not lead any further evidence.

27. Learned Trial Court has made reference to various judgments in the impugned order.

28. It needs no reiteration that it is imperative for any Court to see whether proposed amendment is necessary to decide real disputes and controversy between the parties, and once the Court is satisfied that such amendment is necessary, even if there is delay in moving such application, in order to do complete justice and to reach just and fair decision of the case, the Court should not decline any such request. There cannot be any rigid and straightjacket formula as to when such request is to be granted and when



rejected. It all depends on the factual matrix of any given case and, therefore, such request has to be understood after properly appreciating the facts. The approach of Court needs to be little liberal, particularly when the proposed amendment goes to the root of the matter. In *LIC v. Sanjeev Builders (P) Ltd.*: 2022 SCC OnLine SC 1128, it has been observed that where amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. It also lays down that where amendment is only with respect to the relief in the plaint and is predicated on facts which are already pleaded, ordinarily, the amendment should be allowed

29. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, said provision was though deleted but was restored by Amendment Act 22 of 2002, with an added proviso. The objective is to prevent application for amendment being allowed after the trial has commenced, unless the court comes to 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. Therefore, 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.

30. There cannot be any qualm with legal proposition and provision.

31. However, fact remains that defendant no.4 had been impleaded on 13.12.2013 when the case was already at the stage of cross-examination of plaintiff's witnesses and, therefore, the abovesaid proviso should not be an obstacle, even otherwise.



32. Reference be also made to *Dinesh Goyal alias Pappu Vs. Suman Agarwal (Bindal) and Ors.*: 2024 SCC OnLine SC 2615 wherein also, Hon'ble Supreme Court had permitted the amendment while observing that the overarching Rule is that a liberal approach is to be adopted in consideration of such applications.

33. Of course, plaintiff should have been watchful and quick, but since the amendment seems essential and mere procedural in nature, and is not causing any prejudice either, it should not have been disallowed in the present factual matrix.

34. Viewed thus, the present petition is allowed and the proposed amendments are permitted to be incorporated.

35. The amended plaint is already, reportedly, on record and since the parties do not want to lead any further evidence even after above amendment, learned Trial Court would be at liberty to hear final arguments and to dispose of the suit in accordance with law.

36. The petition, alongwith pending applications, stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 21, 2025/sw/pb