



2025:DHC:9557



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

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Date of Decision: 31.10.2025

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CM(M) 448/2022 & CM APPL. 23046/2022 (stay)**SHRI ANIL GUPTA @ PULPUL & ORS.**PetitionersThrough: Mr. Jaideep Singh, Advocate with LR
no. 1 in person.

versus

SHRI RAM GUPTARespondent

Through: Mr. Siddharth Aggarwal, Advocate

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioners, being legal representatives of the suit defendant, have filed this petition to assail order dated 15.10.2019 of the learned trial court, whereby their application seeking amendment of the written statement was dismissed largely on the ground that since trial had already commenced, there was no occasion to allow such amendments.

2. I have heard learned counsel for both sides.

3. On behalf of petitioners, it is contended by learned counsel that what was sought by them to be inserted by way of amendment in the written statement were only the legal pleas. Learned counsel for petitioners contends that the legal pleas are already available to them, so the court ought to have been liberal in allowing those amendments. Learned counsel for petitioners does not dispute that once the trial has commenced, scope of permitting

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amendments in the pleadings is extremely narrow, but argues that the preliminary legal objections can be raised at any time through amendment of the written statement.

4. On the other hand, learned counsel for respondent/plaintiff strongly opposes the petition, contending that the impugned order is in accordance with law, so cannot be unsettled. It is further contended by the counsel for respondent/plaintiff that what is sought to be inserted by amendments is not just the legal pleas but new facts as well as retraction of admissions.

5. For convenience, the provision under Order VI Rule 17 CPC is extracted below:

*“17. **Amendment of pleadings.**—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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.”

6. The admitted position is that by the time the amendment application was filed by the petitioners, the trial had already commenced. What is to be examined is as to whether the amendments sought are to insert such facts which were earlier not within the knowledge of the petitioners or the same could not be found out despite due diligence.

7. Going by the submissions of the learned counsel for petitioners, the amendments sought, according to him, are only to insert legal pleas. If that



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be so, it is obvious that such amendments cannot be said to be those pleadings which could not be pleaded earlier in the written statement despite due diligence.

8. As reflected from copy of amendment application, the petitioners sought permission to incorporate paragraphs 7 to 28 in the preliminary objections and those paragraphs include certain new facts like the proposed paragraph 8 stating that the permanent super structure/house was constructed by predecessors of the petitioners, who had contributed in construction of their portion, so their rights could not be revoked. Further, the petitioners also seek permission to add two paragraphs in the preliminary submissions, pleading facts which admittedly are not of the nature that were earlier not within their knowledge.

9. That being so, I am in absolute agreement with learned trial court that the amendments sought by petitioners are hit by the proviso to Order VI Rule 17 CPC and therefore the same cannot be allowed.

10. I find no infirmity in the impugned order, so the same is upheld. The present petition is not just devoid of merit but is completely frivolous, so dismissed with costs of Rs. 10,000/- to be paid by petitioners to the legal representatives of respondent through LR no. 1 of the deceased respondent within one week.

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