



2025:DHC:367



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

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Judgment reserved on: 11th November 2024
Judgment pronounced on: 24th January 2025

+ CM(M) 3798/2024

ASHOK KUMAR

.....Petitioner

Through: Mr. Abin B. Kurian, Advocate.

versus

SITARA & ORS.

.....Respondents

Through: Mohd. Elahi, Advocate
R-2 with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

CM APPL.65835/2024 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 3798/2024 & CM APPL.65834/2024

1. The present petition under Article 227 of the Constitution of India has been filed by the petitioner assailing the order dated 01.10.2024, passed by the learned trial court, whereby, the application of the petitioner filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 [“Code”], seeking permission to amend his written statement was dismissed primarily on the ground that the facts sought to be incorporated by the petitioner in the written statement were



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within his knowledge at the time of filing of the written statement and there is no reason seeking its incorporation in the written statement at a belated stage.

2. Respondent filed an Eviction Petition under Section 14 (1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 [**“DRC Act”**] against the petitioner herein before the Rent Controller, Central District, Tis Hazari Court, Delhi.

3. An application for leave to defend filed by the petitioner was allowed by the trial court. Petitioner filed his written statement in the eviction petition.

4. Petitioner’s evidence was closed on 30.07.2024 and the matter was fixed for respondent evidence.

5. Petitioner filed an application under Order 6 Rule 17 CPC on 12.09.2024, seeking amendment of the written statement on the ground that during cross examination of PW-1, certain facts came to the knowledge of the petitioner, of which, he was not aware earlier and that the said facts were just and necessary for the proper disposal of the eviction petition.

6. The application came to be dismissed vide order dated 01.10.2024. The said order has been assailed in the present petition.

7. The limited question which has arisen in the present petition is whether the trial court has committed an error in not allowing the amendment application filed by the petitioner.

8. Order 6 Rule 17 of the Code pertains to the amendment of pleadings in a civil case and the same is reproduced below:-



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“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.”

9. It is a guiding principle of amendment that, generally speaking, all amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings. All amendment of pleadings should be allowed which are necessary for determination of real controversy in the suit, provided proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defence taken.

10. Petitioner by way of the proposed amendment wants to insert Paras No. 23 & 24 in his written statement. The proposed paras are reproduced hereunder:-

“23 That the present petition is not maintainable as the petitioners are not the only legal heirs of late Sh. Abdul Gaffar and the suit property has been inherited by other LRs of Late Sh. Abdul Gaffar i.e. Srnt. Yasmin W/o Mohd. Arif, D/o Mohd Zahid granddaughter of late Abdul Gaffar R/o 3336, Baghechi, Achheji, Bara Hindu Rao, Near Dispensary Delhi-110006, Ms. Sadaf D/o Late Wahabuddin, Grand Daughter of Late Abul Gaffar R/o 5091, Gali Chowkidar Wali, Quresh Nagar, Sadar Bazar, Delhi-110006 and Smt. Sana W/o Mohd. Waseem, Grand Daughter of Abdul Gaffar R/o 2255, Street Dakotan, Turkman Delhi-110006.

24. The Petitioner No.5 has failed to disclose the several alternate accommodations available to him from where his alleged need can be met. It is relevant to mention herein that the details of the

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properties were not disclosed in the Eviction Petition but were revealed by the Respondent No. 2 in his application for leave to defend and were not denied by the (The Petitioner in his reply to the said application. The details of the said properties are as under:-

i. That the Petitioner No.5 has intentionally concealed with malafide intention not disclosed in the Petition about properties bearing Nos. 7582-7585 Badi Masjid Road, Qasab Pura, Delhi - 110006. The said premises are commercial premises, owned by Sh. Abdul Gaffar and are presently in possession of his grandchildren including the Petitioner No.5 herein who is claiming himself to be the grandson, the said properties consisting of ground floor, first floor, second floor and in some of the properties, the floors above thereto. There are shops on the ground floor in the above properties inter alia in possession of the Petitioner No.5 who is running his meat and leather business therefrom. Further Mohd. Shahid is residing in one of the said properties bearing No:7584, Badi Masjid Road, Qasab Pura, Delhi 110006.

ii. That (the properties bearing No. 7582-7585, Masjid Road, Qasab Pura, Delhi-110006 are part of the commercial hub and would be much more suitable for the Petitioner No.5 to start a business.

iii. The Petitioner No.5 has also concealed and deliberately not disclosed in the Eviction Petition about the other properties bearing Nos. 5090-5091, Gali Brahmin Wali, Qasab Pura, Delhi 110006 and Shop No. 731, Chhota Bazar Kashmiri Gate Delhi-110006. The said properties are commercial in nature, owned by Mohd. Abdul Gaffar, the so called grandfather of the Petitioner No. 5 and are presently in possession of his grandchildren including the Petitioner No.5 who is claiming himself as his grandson, the said properties are built up consisting of shops on ground floor and residential above thereto.

iv. The Petitioner No.5 did not disclose in the Eviction Petition about another property bearing No. 5090, Chowkidar Wali, Qasab Pura, Delhi 110006. The said property is adjoining to property bearing No. 509 Gali Chowkidar Wali, Qasab Pura, Delhi, these properties are commercial, situated in a very wide street/road and owned by the said Abdul Gaffar and is presently in possession of the Petitioner No.5 who is claiming himself as his grandson. The said property is built up consisting of shops on ground floor and portion built above thereto are using for residence.

v. That the Petitioner no.5 has further concealed and not disclosed in the Eviction Petition (out of the above shops on Chhota Bazar, Kashmere Gate, there are two shops both bearing Nos. 732A, out of

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which one shop and seven shops on the first floor of this property are in possession of the Petitioner No.5 who is also running his business of spare parts therefrom).

vi. That the petitioner No.5 has further concealed of property No. 2966-2971, Ganda Nala Bazar, Mori Gate, Delhi 110006 the same is commercial built up Ground Floor, First Floor, Second Floor and Third Floor having number of shops on each floors shown therein. It is submitted that the Petitioner No.5 is in possession of all the shops on first floor, second floor and third floor, who is using the same for running his businesses therefrom.

vii. The Petitioner No.5 has further not disclosed about the property situated in Ghazipur Dairy Farm, Gali No. 4. Shivaji Road, Delhi in his power and possession from where he is also doing dairy farm business.

viii. The Petitioner No.5 has further concealed documents with respect to his income and has intentionally not filed his income tax returns, computation of income and balance sheets etc while falsely claiming to be doing business with his brother.

ix. That the Petitioner No.5 has various properties in his power possession wherefrom he is already running his various businesses of spare parts, meats, leather, dairy form etc. more particularly from the properties described hereinabove and thereby he has sufficient suitable accommodation available to him about which he has intentionally and with malafide intention not disclosed in the Eviction Petition, in order to obtain Eviction order summarily.

x. The Petitioner No.5 has also failed to disclose that the property bearing no. 732B, Chhota Bazar, Kashmere Gate, Delhi 110006 had been vacated by the tenants P.S. Sethi & Sons. way back in the year 2010 and the same is lying vacant since then. The said property is sufficient to meet the alleged need of the Petitioner No.5.”

11. Before proceeding on to the merits of the case, it is imperative to consider the law of amendment of pleadings. It is no more *res-integra* that the courts should adopt a liberal approach in granting leave to amend the pleadings, which certainly has to be within the statutory framework. The Hon'ble Supreme Court of India in **Life**

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Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. & Anr. 2022 SC On-line 1128, after considering various pronouncement regarding the amendment of the pleadings, have culled out the principles for dealing with the applications under Order 6 Rule 17 of the Code, which are as follows:-

“(1) Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negative.

(2) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

(3) The prayer for amendment is to be allowed:

(i) If the amendment is required for effective and proper adjudication of the controversy between the parties.

(i) To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(4) A prayer for amendment is generally required to be allowed unless:

(i) By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.



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(ii) The amendment changes the nature of the suit.

(iii) The prayer for amendment is mala fide, or

(iv) By the amendment, the other side loses a valid defence.

(5) In dealing with a prayer for amendment of pleadings, the court should b avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(6) Where the 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.

(7) Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(8) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(9) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(10) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(11) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to hear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking



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amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

12. By CPC (Amendment) 2022, a new proviso has been added to the rule namely that no application for amendment of the pleadings 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. Thus, after the trial of the case has commenced, no application for amendment of the pleadings shall, be allowed 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.

13. It is in this backdrop that the present petition has to be considered by the Court. Petitioner herein by way of proposed amendments primarily seeks to include two facts, firstly that respondents are not the only legal heirs of late Sh. Abdul Gaffar and the suit property has also been inherited by other legal heirs of late Sh. Abdul Gaffar namely Smt. Yashmin, Ms. Saddaf and Ms. Sana. Secondly, respondent No. 5 Mohd. Saqib has failed to disclose several alternative accommodations available to him for meeting his needs



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and has not disclosed his true income.

14. In support of his contention, learned counsel for the petitioner submits that despite due diligence, the aforesaid facts could not be put forth earlier by the petitioner and it is only after the examination of the witness of the respondents that new facts have come to his knowledge. It has been contended that trial court has dismissed the application in a mechanical manner without considering this fact.

15. Admittedly, eviction proceedings before the trial court are at the stage of respondents' evidence (evidence of petitioner herein) and it is at this stage that the aforesaid amendments have been sought by the petitioner in his written statement. Even though, the over arching rule while considering the application under Order 6 Rule 17 of the Code is that a liberal approach is to be adopted, the Court cannot lose sight of the fact that petitioner in his proposed amendment, has himself admitted that he had already disclosed the alternative accommodations of respondent No. 5 in his application for leave to defend, meaning thereby, that petitioner was himself aware of this fact and despite the same, amendment application has been preferred at such a belated stage, and as such, the time gap between the filing of the written statement and the filing of the application before the trial court to amend remains unexplained. It is also not explained as to how bringing on record the factum of there being other legal heirs of late Sh. Abdul Gaffar would be necessary for determining the real question in controversy, also remains unanswered. Admittedly, the trial has already commenced and allowing amendment at this stage,





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would have the effect of stalling the same.

16. The Court is of the view that petitioner has failed to show due diligence in filing the amendment application. The order of the trial court does not suffer from any illegality or perversity.

17. In view of the aforesaid, there is no merit in the present petition. Petition is accordingly dismissed.

RAVINDER DUDEJA, J.

JANUARY 24, 2025

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