

CS NO. 15291/08
RAKESH V. BHOLE

15.09.2018

Present: Sh. Vivek Sharma, Ld. Counsel for plaintiff.

(fresh vakalatnama is filed)

Sh. H.K. Monga, Ld. Proxy counsel for defendant no. 12.

Sh. Ratan Prakash, Ld. Proxy counsel for defendant no. 1, 3 to 8, 11, 15, 16, 22 and 23.

Arguments heard on the application of the plaintiff u/Rule 17 of Order VI CPC pending since 29.09.2006.

No objection is submitted by the parties present today. Ld. Counsel for plaintiff submitted that the only objection is filed by the defendant no. 25 to the said application. However defendant no. 25 is not available today and reply to the same is perused. Parties who have not filed reply are proceeded ex-parte in the present application. Though defendant no. 25 is not present but his reply is perused and accordingly the application is decided.

The prayer of the plaintiff is that since the land in question is under consideration for specific performance of contract has since been acquired under Land Acquisition Act. Compensation award is passed for which plaintiff seeks necessary amendment to add prayer to file necessary Court fees in pursuance of claiming the said compensation and amend the plaint accordingly at para no. 32. The defendant no.

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25 is a the subsequent purchaser of the said land which is already acquired. Plaintiff further seeks to claim the amount disclosed in the application for a sum of Rs.1,03,16,062/- and to pay necessary Court fees thereon alongwith prayer (c) which is respective claim on the awarded amount under Land Acquisition Act.

In reply to the same filed by defendant no. 25 it is pleaded that the claim is highly belated and barred by limitation and that the amount is beyond pecuniary jurisdiction of the present Court.

Parties are heard and record perused.

It is noted that the ground of pecuniary jurisdiction is not available to the defendant in view of change of pecuniary jurisdiction pending decision of the present application. The other objection of late amendment and barring of amendment by limitation cannot be allowed if the amendment is necessary to decide the suit between the parties u/Rule 17 of Order VI CPC. The test is whether the amendment is necessary to decide the suit between the parties to have complete decision between them. In the present case the suit property is admittedly had since been acquired under Land Acquisition Act and therefore such acquisition and awarding of decision thereon is definite bearing on the rights of the plaintiff. Such further claim of the plaintiff under the present amendment application is necessary to decide the dispute completely between the parties. It will also not change the nature of the suit

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and which is subsequent fact to the filing of the present suit. The late filing of amendment application therefore is not found reasonable the ground at this stage in restraining the present amendment application. However due consideration on late filing may be given at the stage of final judgment. In such view of the matter the amendment application of the plaintiff is allowed. Amended plaint be filed within 30 days from tomorrow with advance copy to the opposite parties who are contesting in the present case. Thereafter amended WS be filed within next 30 days of such filing of the amended plaint. If plaintiff is not able to serve the amended plaint on the defendants then he may file copy of the same on record within 15 days from tomorrow on record which defendants are at liberty to collect it from record.

Put up for arguments on the application u/Rule 17 of Order VI CPC of defendant no. 12 on **22.09.2018** as last opportunity as main Counsel for defendant no. 12 is not available today.

(JOGINDER P. NAHAR)
ADJ-04/CENTRAL/THC
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