

In The Court of Rakesh Kumar-III
Additional District Judge-01 (East)
Karkardooma Courts, Delhi

S No.471/16/13

In the matter of :-

Suchin Rana

.....Plaintiff

Versus

Sudha Singh

.....Defendant

ORDER

19.07.2017

1. Vide this order I shall dispose off an application U/o 6 rule 17 CPC, filed by the defendant.
2. It is averred in the application under consideration that the erstwhile counsel filed written statement but certain material facts could not be mentioned and during the course of preparation of cross examination, it came to the knowledge of the present counsel that certain facts are very necessary for the just disposal of the case and therefore the defendant wants to incorporate some paras in the written statement.
3. Reply to this application was filed denying all the averments.
4. I have heard ld. counsels for the parties and perused the record.
5. By way of present application, defendant wants to amend the written statement. He wants to add five sub paras in para 3 of the written statement specified by alphabets a) to e). Issues in this case were framed on 14.07.2014 and the plaintiff filed affidavit of his examination in chief and tendered the same on 20.05.2015. He was cross examined on various dates.

Thereafter PW2 Chhiddi Khan tendered his examination in chief and he was cross examined on 29.08.2016. The examination in chief of Dipin Rana was filed and tendered on 01.09.2015 and he was not cross examined. The present application was moved on 18.02.2017 i.e. after the commencement of trial.

6. Order 6 rule 17 CPC reads as under :-

[17. Amendment of pleadings-The Court may at any stage of the proceedings allow either party to alter or amend the 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.]

7. In the application, the defendant has nowhere stated that she could not move the amendment application prior to the commencement of the trial as she was not aware about the facts stated in the application despite due diligence.

8. The pleadings of the parties formed the foundation of their case and it is not open to them to give up the case set out in the pleadings and to propound a new case. The various Hon'ble High Courts and Hon'ble Supreme Court have held in various cases that party cannot be allowed to substantiate a case different from what is pleaded. In that situation, the opposite party shall have a great prejudice. In the present case, the plaintiff has examined the witnesses and till date, the defendant

has not put the alleged facts to the witnesses, which she wants to incorporate in the written statement. Thus, the totality of facts mentioned above, this court is of the opinion that amendment cannot be allowed in such a belated stage. Hence, the application is dismissed.

Announced in the open
Court on 19.07.17

(Rakesh Kumar-III)
Additional District Judge-01
(East)/KKD/Delhi / 19.07.17