

28.01.2025

Present : Sh. Pramod Singh, Ld. Counsel for the plaintiff with
plaintiff.
Sh. Arvind Sharma, Ld. Counsel for the defendant
with husband of defendant.

1. Matter is fixed for order on application under Order VI Rule 17 r/w Section 151 CPC filed on behalf of defendant seeking amendment in written statement.

2. It is submitted on behalf of defendant that he wishes to amend sub-para of para no.1 of preliminary objections stating that earlier defendant was tenant in the property in question under the land-lordship of Smt. Gurmeet Kaur and Rs. 1,00,000/- was given as security amount which has been adjusted later in the earnest money of total consideration amount of Rs. 6,50,000/- and sale deed was executed on the value of the circle rate of Rs. 3,60,000/-; that the receipt was executed by Smt. Gurmeet Kaur in favour of defendant and husband of plaintiff is one of the witness of the said receipts; that defendant has also paid Rs. 4,20,000/- through cheque and cash to Smt. Gurmeet Kaur (erstwhile owner) out of total sale consideration amount of Rs.6,50,000/- and rest of the amount of Rs. 2,30,000 paid by the defendant upto March, 2009.

3. It is further submitted that defendant desired to aver in written statement details of the payment made by the defendant and her husband to Smt. Gurmeet Kaur including mode to payment as well as source of funds for the said payment.

4. It is further submitted that the defendant found some paper i.e. receipt and payment documents and came to know about the said facts which has not been incorporated in the written statement therefore, defendant wants to amend the written statement filed by him and place on record the document regarding said payments.

5. It is further submitted that defendant also wants to add the details of cost of 4th Floor of the construction at in end of para no.3 by the reply on merits by incorporating details about the money arranged by defendant for the construction of 4th floor of suit property and receipt of purchase of construction material thereof.

6. It is further submitted that the said amendments are necessary to decide the controversy between the parties and will not change the nature of the suit and no prejudice will be cause to the plaintiff, if the same is allowed. Therefore, it is prayed that the present application may be allowed.

Ld. counsel for defendants relied upon judgments of the Hon'ble Supreme Court in case **Gurbaksha Singh and Ors. vs. Buta Singh & Anr. (AIR 2018 SC 2635)**, **Sivakami and Ors. vs. State of Tamil Nadu and Ors. (AIR 2018 SC 2637)**, **Surender Kumar Sharma vs. Makhan Singh (2009) 10 SCC 626** and **Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., V**

(2007) SLT 187 in support of their prayer for amendment in the written statement.

7. Ld. Counsel for the plaintiff vehemently opposed the instant application under Order VI Rule 17 CPC by filing reply to the same. It is submitted that the present application is devoid of merits as the same has been filed after completion of pleadings and plaintiff's evidence is pending since 2022 and as per the proviso of Order VI Rule 17" no application for amendment shall be allowed after the trial has commenced; that defendant with sole motive to linger on the proceedings; that the amendment sought by the defendant is based on forged documents and had cooked up a story to fill up the lacunas which can not be permitted in the eye of law, hence, the present application is liable to be dismissed.

8. Submissions heard. Record perused.

9. By way of the proposed amendment, the defendant wishes to incorporate details of payment claimed to have been made by the defendant to the original owner of the suit property as well as the cost of the construction of the 4th floor of the suit property claimed to have been incurred by the defendant.

10. It is seen that the present matter is at the initial stage of plaintiff's evidence. The evidence by way of affidavit has been filed but the same has not yet been tendered. The proposed amendment in the written statement does not result in change in nature of the suit.

11. In this connection, it is pertinent to refer the judgment of the Hon'ble Supreme Court in case **Usha**

Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors.,V
(2007) SLT 187, wherein it is held that

“the court should be liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss caused to other side or prayer for amendment not bonafide – in case of amendment of written statement courts would be more liberal in allowing than that of plaint -question of prejudice would be far less in former than in latter and addition of new ground of defence or substituting or altering defence or taking inconsistent pleas in written statement can also be allowed.

12. Further, no prejudice shall be caused to the plaintiff, if the said amendments are allowed. The plaintiff shall have ample opportunity to cross examine to defendant’s witness on the aspect of proposed amendments sought by the defendant. Furthermore, the amendments sought by defendant in the written statement appears to be necessary for the purpose of deciding all real questions in the controversy between the parties as well as for the just adjudication of the matter.

13. Therefore, in the interest of justice, an application under Order VI Rule 17 r/w Section 151 CPC filed by the defendant stands allowed subject to cost of Rs. 3000/- to be paid to the plaintiff.

14. Defendant is directed to file amended written statement before the NDOH with advance copy to opposite party.

Another application under Order VIII Rule 1A CPC filed on behalf of the defendant is also pending for disposal.

15. It is submitted on behalf of the defendant that certain documents which are mentioned in the application could

not be filed at the time of written statement as same were not in possession of defendant as same were missing and now defendant found the said documents; that non-filing of said documents alongwith written statement is neither intentional nor deliberate; that no prejudice would be caused to the plaintiff if the present application is allowed. Therefore, it is prayed that the the present application may be allowed.

16. Ld. Counsel for the plaintiff has opposed the present application by filing reply. It is submitted that present application is devoid any merits as same has been filed at the belated stage; that defendant with the sole motive to linger on the proceedings; documents filed by the defendant are forged and fabricated, hence, the present application is liable to be dismissed with heavy cost.

17. Submissions heard. Record perused.

18. It is seen that the documents which defendant seeks to place on record appears to be relevant for adjudication of real question in the present suit.

19. It is settled law that merely taking documents on record, does not amount either of proof or admission. The provision of Order VIII Rule 1A CPC has been made only for the purpose to take on record documents of the plaintiff which could not be filed alongwith the plaint for any reason whatsoever.

20. Further, no prejudice shall be caused to the plaintiff, if the said documents are taken on record. The plaintiff shall have ample opportunity to cross examine to defendant on the said documents. Therefore, in the interest of justice, application

under Order VIII Rule 1A r/w Section 151 CPC for placing on record additional document stands allowed subject to cost of Rs. 1000/- to be paid to the plaintiff. Additional document filed on behalf of the defendant are taken on record.

21. Put up for filing of amended written statement on 22.03.2025.

(SOMITRA KUMAR)
DJ-06, EAST/ KKD COURTS
DELHI/28.01.2025 (s)