

27 CS 671/2017

31/03/2022

Present: Plaintiff No. 2 in person.

Proxy counsel Sh. Amandeep Singh for defendants No. 1,2,4,5,6 & 10.

Proxy counsel Ms. Samar Jahan for defendants No. 7&8.

Submissions heard on the application under Order 8 Rule 1 r/w Section 151 CPC filed on behalf of defendant No. 10, seeking condonation of delay in filing the written statement.

On behalf of defendant No. 10, there are 40-45 days of delay in filing the written statement condonation of which has been sought by way of application in hand primarily on the ground that defendant No. 10 was impleaded as a defendant in the present suit vide order dated 23.01.2019 on application under Order 1 Rule 10 CPC and the plaintiffs did not supply the documents filed by the plaintiffs along with the original plaint and this was the reason why there was a delay in filing the written statement. It may be noted that defendant No. 3 and defendant No. 10 are husband and wife.

The submission of plaintiff No. 2 is that the original documents were supplied to defendant No. 3, therefore if defendant No. 10 was really diligent, he could have filed the written statement within the stipulated period and there is no ground for condoning the delay.

The Court is not impressed with the submission of plaintiff No. 2. The husband and wife are legally not one person. Supplying the documents to defendant no. 3 would not tantamount to supply of documents to the

defendant no. 10 who was not one of the original defendants. The delay in filing the written statement is hereby condoned.

Application is disposed of. Written statement filed by defendant No. 10 is taken on record.

Reply to the another application of plaintiff under Order 8 Rule 1 & 10 r/w Section 151 CPC dated 24.09.2019 filed on behalf of defendants No. 1,2,4,5,6&10. Copy supplied.

Submissions on the said application dated 24.09.2019 filed on behalf of plaintiffs heard.

By way of present application, the prayer of the plaintiffs is to struck off the defences of the defendants and pronounce judgment against defendants No. 1 to 9 as they failed to file amended written statement.

In order dated 23.01.2019 by which application under Order 1 Rule 10 CPC was allowed and Smt. Kiran Devi was impleaded as defendant No. 10, the plaintiff was directed to file amended plaint in consonance with Order 1 Rule 10(4) CPC and *inter-alia* it was stipulated that the newly added defendant shall thereafter file a written statement to the same). In order dated 08.03.2019, it was stipulated that written statement be filed on behalf of Kiran Devi within 30 days from the date of the said order.

The thrust of counsel for defendant No. 10 is that after defendant No. 10 was impleaded as the defendant, there was no specific direction to other defendants to file amended written statement and therefore if the defendants no. 1 to 9 did not file the amended written statement the application as filed by the plaintiffs cannot be allowed.

When any amended plaint is filed by the plaintiff either under Order 1 Rule 10 CPC or under Order 6 Rule 17 CPC the defendant who already might have filed a written statement gets an indefeasible right to file written statement, if by way of amended plaint, their interest is touched upon. However, if no amended written statement is filed, the Court would read the written statement which is already on record filed to the original suit and merely on the basis of that subsequent to filing of amended plaint no written statement has been filed, no judgment under Order 8 Rule 10 CPC can be passed which provides the discretion to the Court to pass the judgment or make such order as the Court deems fit.

The Court does not find any merit in the application, accordingly same is dismissed.

In the interest of justice, one opportunity is given to defendants No. 1 to 9, if advised, to file amended written statement within four weeks from today with copy of same to counsel for the plaintiffs. The plaintiff no. 2 who is an advocate has objected to the Court giving opportunity to the defendants no. 1 to 9 giving the opportunity and asked the court the reason why such opportunity has been given? After passing of the order the Court does not appreciate such kind of questions. The court informed the plaintiff no. 2, if she does not like the order passed by the court she may challenge it as per law.

Today on behalf of defendant No. 10 an application under Section 151 CPC has been moved. Copy supplied.

Plaintiff No. 2 submits that no reply to said application has been filed. Arguments heard.

By way of application in hand, the prayer made by defendant No. 10 is that the amended plaint which the plaintiffs have filed, the plaintiffs be directed to file the amended plaint strictly in terms of order dated 23.01.2019 or in the alternative to strike of the extraneous averments made by the plaintiffs in the amended plaint.

The necessary facts to dispose of the present application are that the defendant No. 10 was impleaded as the defendant vide order dated 23.01.2019 and the plaintiffs were directed to file amended plaint in consonance with Order 1 Rule 10(4) CPC.

The law is when the defendant is impleaded, the plaintiff gets the right to amend the plaint. The logical basis for the same is that the plaint has to contain all the material facts and when the trial is proceeded with there can be no evidence which is beyond the pleadings and therefore under Order 1 Rule 10(4) CPC, there is the right to amend the plaint which cannot be curtailed by the Court to amend the plaint on the impleadment of a new defendant but discretion has been given to the Court not to allow the plaintiff to amend the plaint on the impleadment of a new defendant.

The arguments of counsel for defendant No. 10 are that even for the purpose of amendment of plaint, the principle of Order 6 Rule 17 CPC is applicable and that the plaintiff is required to move an application.

The Court does not concur with the submission of counsel for defendant No. 10.

If a defendant is impleaded in the suit no one cannot visualise how the impleadment of the new defendant would affect other facts which have been stated in the plaint. Hence, Legislature has not provided any

limitations under Order 1 Rule 10(4) CPC except 'unless the Court otherwise directs', For the purposes of Order 6 Rule 17 CPC such amendments can be allowed as may be necessary for the purpose of determining the real controversy between the parties which is not the requirement of Order 1 Rule 10(4) CPC.

It may also be noted that it is the argument of counsel for defendant No. 10 that the reference of 'at any stage' in Order 6 Rule 17 CPC indicates there is implied reference to Order 1 Rule 10 CPC and the implication of the counsel for defendant No. 10 is that even for the purpose of Order 1 Rule 10 CPC there has to be an application.

The Court does not concur with the submission of counsel for defendant No. 10. Counsel for defendant No. 10 has also submitted that the amended plaint is not in consonance with the real facts of the case; when the plaintiffs came to know that it is defendant No. 10 who is the owner of the property in dispute in spite of that in the amended plaint no reference of such facts have been made. The manner in which facts are to be stated in the plaint whether amended or original plaint depends upon the discretion of the plaintiff how the plaintiff wants to protect his/her interest.

The Court does not find any merit in the application. Hence the same is dismissed.

It is jointly stated that there are no other applications pending.

On the next date, under Section 30 CPC some responsible official of defendants No. 7&8 is directed to appear in person with all the records of property in dispute with the clarification as to what was the legal status of the property in dispute which was allotted to the father of plaintiff

No. 2 i.e., whether the status of deceased father of plaintiff No. 2 was that of a licensee/tenant, etc.

Replication and rejoinder, if filed may be exchanged between the parties.

Put up for completion of pleadings, admission/denial of documents and framing of issues on **18.07.2022**.

(VIJAY KUMAR JHA)
Addl. District Judge-02 (East)
Karkardooma Courts/ 31/03/2022