

Awasthi Shipping Services P. Ltd. Vs. Destination Cafe Pvt. Ltd.

09.04.2025

Present: Mr. Mahesh Chaudhary, Ld. Counsel for the plaintiff.  
Mr. Prashant Bajaj and Mr. Prakhar Vashisht, Ld. Counsels for the defendant.

The application of the defendant under Order 14 Rule 5 read with Section 151 of CPC for amendment of issue no. 2 is taken up for consideration.

Application has been filed on the ground that the plaintiff has not sought any relief for grant of subsequent rents in the plaint and without there being any such prayer, in issue no. 2, it is stated that the Court will decide the issue of whether the plaintiff is entitled to recover subsequent rents.

Ld. Counsel for the plaintiff submits that the plaintiff is entitled to mesne profits/damages for the period subsequent to termination of tenancy and therefore the Ld. Predecessor of the Court has correctly framed the issue no. 2. He submits that the prayer no. (iv) of the plaint is for grant of any other relief and therefore, for this reason also, the Ld. Predecessor has correctly framed the issue.

He submits that even though in paragraph no. 7 of the plaint, mesne profits at the rate of Rs. 3 lakhs have been sought, the plaintiff is ready to forego this amount and restrict its claim to recover mesne profits/damages at the rate of rent which is Rs. 2,47,450/-.

Arguments are heard and the record is perused.

The title of the suit is "Suit for possession and recovery of rent/mesne profits/damages".

In paragraph no. 7 of the plaint, the plaintiff has

Contd...2/-

categorically stated that the defendant is liable to pay damages/mesne profits.

For the above reasons, it is evident that the plaintiff intended to claim mesne profits/damages. However, it appears that this relief has inadvertently not been specifically mentioned in the prayer clause.

The Court is of the opinion that the relief for grant of mesne profits/damages can be read under prayer clause no. (iv) of the plaint for doing substantial justice.

The plaintiff has restricted its claim to mesne profits/damages to the last rate of rent.

For the above reasons, no amendments need to be carried out in issue no. 2.

With these observations, the application of the defendant under Order 14 Rule 5 read with Section 151 of CPC is dismissed.

Now the application of the defendant under Order 6 Rule 17 read with Section 151 of CPC is taken up for consideration.

Ld. Counsels for the defendant submit that the application has been filed by the defendant only to bring on record the steps taken by it for de-sealing of the tenanted premises. They submit that the tenanted premises was let out to the defendant by the plaintiff by concealing that it is a stilt parking which cannot be used for commercial purposes. They submit that they gained knowledge that the premises is a stilt parking during the pendency of the suit on 30.07.2018.

They state that after gaining this knowledge, they kept pursuing the matter at different levels for de-sealing of the property and it is these facts which the defendant wants to bring on record by amending the written statement.

Contd...3/-

Ld. Counsels for the defendant submit that the amendment sought will not change the nature of the suit and will not prejudice the plaintiff.

Reply to the application has been filed.

Application has been opposed.

Arguments have been heard and the record has been perused.

The suit was at the stage of cross-examination of the witness of the plaintiff. The witness was cross-examined in part on 14.05.2024 and on the said date, Ld. Counsel for the defendant stated that all efforts will be made by him to conclude the cross-examination on the next date of hearing.

It is subsequent to this that the defendant filed application for amendment.

Trial has commenced. In case the application is allowed, the suit will be relegated back to the stage of completion of pleadings and framing of issues. Evidence will have to be led again. Suit has been pending since around seven years.

The primary averment that the defendant wants to bring on record is that the tenanted premises is a stilt parking. Ld. Counsel for the defendant has stated that they gained knowledge of this fact on 30.07.2018. Therefore, they were aware of this before issues were framed. No explanation has been furnished for not seeking amendment at an earlier date to bring on record that the tenanted premises is a stilt parking and that this was concealed by the plaintiff.

The proviso to Order 6 Rule 17 of CPC categorically provides 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

Contd...4/-

before the commencement of trial.

There is no explanation for the delay in seeking amendment. In view of the proviso to Order 6 Rule 17 of CPC, the application of the defendant cannot be allowed and is accordingly dismissed.

Now the application of the defendant to bring on record additional documents is taken up for consideration.

By this application, the defendant wants to bring on record orders of Hon'ble High Court and orders of Hon'ble Supreme Court, besides an order dated 30.07.2018 passed by NDMC, representation dated 01.05.2024 and acknowledgment qua representation dated 02.05.2024.

Ld. Counsel for the plaintiff submits that the plaintiff is not opposing the request to bring on record the orders of Hon'ble High Court and Hon'ble Supreme Court.

He submits that the other documents cannot be taken on record.

Arguments are heard and the record is perused.

The order dated 30.07.2018 passed by NDMC cannot be taken on record since no explanation has been furnished for not taking steps to bring on record this document at an earlier stage and before issues were framed on 31.08.2018.

Ld. Counsels for the defendant have submitted that the representation dated 01.05.2024 was made to NDMC for de-sealing of the premises.

The representation is stated to have been made in terms of order dated 15.12.2023 passed by the Hon'ble Supreme Court. Since the representation was made only on 01.05.2024, it could not have been filed at an earlier stage. No prejudice will be caused to the

Contd...5/-

plaintiff if the document is taken on record since the plaintiff is yet to lead its entire evidence and can also cross-examine the defendant with regard to the document.

For this reason, the Court is inclined to take on record the representation and the document containing acknowledgment of having submitted the representation.

The application of the defendant for taking on record additional documents is disposed off with the direction that the orders of Hon'ble High Court and Hon'ble Supreme Court, representation dated 01.05.2024 and acknowledgment dated 02.05.2024 are taken on record.

To come up for cross-examination of the witness of the plaintiff on 29.05.2025.

(Shirish Aggarwal)  
District Judge-03  
Patiala House Courts, New Delhi  
09.04.2025