

CS No. 528/18

Vinita Singhal Vs. Mage Ram Sharma

04.07.2022

Present: Mr. Kuldeep Sharma, Ld. Counsel for the plaintiff.
Ms. Yogender Singh Rohila, Ld. Counsel for the defendant.

Matter is at the stage of arguments on the application of plaintiff under Order VI Rule 17 CPC as well as arguments on the application of defendant under Section 151 CPC.

Arguments heard on the abovesaid applications.

Be put up for orders at 4:00 PM.

Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
04.07.2022

At 4:00 PM

Present: None for the plaintiff.
None for the defendant.

ORDER ON THE APPLICATION

UNDER ORDER VI RULE 17 CPC

Ld. Counsel for the plaintiff argues his application under Order VI Rule 17 CPC, thereby he sought amendment of the plaint. He submits that these amendments are necessary for determining the real controversy between the parties. He states that only WS has been

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filed by the defendant herein. He submits that filing of WS does not mean that the trial has begun. He submits that the amendment does not change the nature of the suit and no prejudice will be caused to the defendant, if, the amendment is allowed.

Per Contra, Ld. Counsel for the defendant states that his reply to the application under Order VI Rule 17 read with Section 151 CPC should be taken as his arguments. He states that he was well within his right to forfeit the earnest money when the plaintiff did not come forward to complete the sale transaction in furtherance of agreement to sell dated 20.01.2018. He submits that the trial has begun on filing of WS and therefore, the amendment should not be allowed such at belated stage.

Heard. Record perused.

In view of the submissions made, the Court is of the considered view that the amendment application of the plaintiff does not change the nature of the suit. Filing of WS does not tantamount to starting of the trial. Trial in suit would only commence at the stage of evidence. The present amendment application is not hit by the proviso to Order VI Rule 17 CPC. In fact, the amendment is required to determine the real controversy between the parties.

Accordingly, the application of the plaintiff under Order VI Rule 17 CPC is allowed. Amended plaint is taken on record.

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Defendant is at liberty to file the amended WS alongwith advance copy to the other party on **NDOH**.

ORDER ON THE APPLICATION UNDER SECTION 151 CPC

The application of defendant is dismissed as being pre-mature. The plaintiff has a cause of action in his favour. The readiness and willingness of the plaintiff to perform the agreement to sell dated 20.01.2018 cannot be adjudged without a trial and therefore, direction to the plaintiff for release/ return of original documents without any apprehension of creating any third party interest by the plaintiff cannot be allowed at this stage.

Accordingly, the application of defendant under Section 151 CPC is dismissed.

Be put up for completion of pleadings on **18.10.2022**.

Shivali Bansal
ADJ-03, Rohini Courts
North District, Delhi
04.07.2022