

IN THE COURT OF SH. KISHOR KUMAR
ADDITIONAL DISTRICT JUDGE-04 (NORTH)
ROHINI COURTS, DELHI

CS No. 1709/2016
CNR No. DLNT01-006008-2016

Smt. Poorvi Saxena

.....Plaintiff

Versus

Smt. Reena Verma & Anr.

.....Defendants

Order/28.03.2024

1. Vide this order I shall dispose of the application under Order VI Rule 17 CPC moved on behalf of the defendant no.1.

2. In brief, it is stated on behalf of the defendants that joint written statement has been filed on behalf of the defendants for which the defendant no.2 forcibly obtained signature of the defendant no.1 after brutal assault and filed the written statement. The defendant no.1 was not allowed to read the contents of written statement. It is further stated that defendant no.2 died on 17.07.2021 and only after the death of defendant no.2, the defendant no.1 came to know about the stand taken by the

defendant no.2 in the joint written statement which was far away from the truth. It is submitted that no prejudice would be caused to the plaintiff if the defendant no.1 is allowed to file her separate written statement and same will not change the nature of the suit.

3. In reply to the present application, it is submitted on behalf of the plaintiff that the defendant no.1 has not disclosed the proposed amendment to be carried out in the written statement. The plaintiff has denied the averments made in the application and prayed for dismissal of the same.

4. I have heard Ld. Counsels for both the parties as well as have gone through the material on record.

5. Order VI Rule 17 of the CPC grants permission to the parties to the case to amend their pleadings at any stage of the proceedings. The proviso under this rule says that after the trial has commenced, an application for amendment shall not be allowed. However, it might be allowed if the court thinks that, in spite of due diligence, it was not possible for the party to raise the matter before the trial commenced. Such application is not governed by the law of limitation. That means there is no limitation available against this provision, and an application to amend the pleading can be granted at any stage of the proceedings.

6. The plaintiff has filed the present suit for specific performance with vacant and peaceful possession of suit property or in alternative for payment of damages. The suit was instituted on 27.04.2019 and the defendants filed their written statement on 04.06.2019. Record further reveals that issues in the present case have been framed on 14.08.2019. As per the defendant no.1 herself, the defendant no.2 died on 17.07.2021. It is highly surprising that defendant no.1 kept silent from 04.06.2019 to 17.07.2021 and did not come forward with any application for amendment in written statement. It is further pertinent to mention here that after the death of defendant no.2 on 17.07.2021, the present application has been filed on 17.04.2023. Perusal of application shows that no explanation has been given by the defendant no.1 for not moving any such application from 04.06.2019 when she knew since that date that her signatures were obtained forcibly. Moreover, on many dates, defendant no.1 has appeared in the Court in person, but she never raised any objection to the written statement filed earlier if it had been filed without her knowledge and consent. The written statement earlier filed on record on behalf of the defendants is also accompanying with an affidavit and, therefore, it cannot be said that defendant no.1 has not filed the written statement earlier consciously, out of her own free will and consent.

7. In *Vidyabai and others vs. Padmalatha and another*—AIR 2009 SC 1433, Hon'ble Supreme Court has discussed the legislative intent behind bringing the proviso to Rule 17 of Order 6 of CPC. At para 7 of the said judgment it was opined that the provisions of Order 6 Rule 17 of the CPC are in mandatory form. The court's jurisdiction to allow an application under Order 6 Rule 17 of CPC is taken away unless the conditions precedent therefore are satisfied i.e., the court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of trial.

8. In the application in hand, the defendant no.1 has taken the stand that the defendant no.2 forcibly obtained her signature after brutal assault and filed the written statement. The defendant no.1 has failed to file on record any complaint made by her against defendant no.2 for such brutal assault. First written statement was filed on 04.06.2019 and now the amended written statement is sought to be filed by moving present application on 17.04.2023. The defendant no.1 has miserably failed to show that in spite of due diligence she could not have raised the matter before the commencement of trial, especially, when as per defendant no.1 herself that her signatures were obtained forcibly on the written statement filed on 04.06.2019. In fact, the conduct of defendant no.1 shows that she was totally careless in bringing the matter before the Court and present application has been filed when the plaintiff has already tendered her affidavit in evidence,

thus, apparently a delay tactics is being played by defendant no.1
by way of present application.

9. In view of my discussion hereinabove and the case laws, as
cited above, application under Order VI Rule 17 CPC, moved on
behalf of defendant no.1 stands dismissed.

Announced in open Court
On 28.03.2024

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/28.03.2024